



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 20, 2017

Mr. Barry L. Macha
General Counsel
Office of the General Counsel
Midwestern State University
3410 Taft Boulevard
Wichita Falls, Texas 76308-2099

OR2017-28862

Dear Mr. Macha:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 688844.

Midwestern State University (the "university") received a request for the personnel files of two named individuals. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state, and provide documentation showing you have notified the named individuals of their right to submit comments to this office why some of the submitted information should not be released. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have not received comments from the notified individuals. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the information the requestor specifically excludes any home address, personal phone numbers, dates of birth, social security numbers, driver's license numbers, personal motor vehicle registration information, retirement system information, personal e-mail addresses, banking information, family member information, emergency contact information, medical records, and workers compensation records from the scope of the request. Thus, this information, which you marked and we marked, is not responsive to this request for information. This ruling does not address the public availability of non-responsive information, and the university is not required to release non-responsive information to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. However, this office has concluded the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 392 (1982) (reasons for employee's resignation ordinarily not private). We further note the scope of a public employee's privacy is narrow. *See* Open Records Decision No. 423 at 2 (1984). Upon review, we find none of the responsive information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the responsive information may be withheld under section 552.101 in conjunction with common-law privacy. As no further exceptions to disclosure have been raised, the university must release the remaining responsive information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/som

Ref: ID# 688844

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)