



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 9, 2018

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2018-03154

Dear Ms. Tynan:

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# 695179 (OGC Nos. 17837 and 178650).

The University of Texas at Arlington (the "university") received two requests from different requestors for a specified police report. You state the university will redact dates of birth of members of the public pursuant to Open Records Letter No. 2016-00361 (2016).¹ You also state the university is withholding motor vehicle record information under section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.² You state you will release some information. The university claims some of the submitted information is not subject to the Act. Additionally, the university claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹Open Records Letter No. 2016-00361 authorizes the university to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

Initially, the university asserts the University of Texas Electronic Identification Number (“UTEID”) contained in the submitted documents is not subject to the Act. The Act applies only to “public information.” *See* Gov’t Code § 552.021. Section 552.002(a) defines “public information” as:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. The university informs our office that when combined with an individual’s password, a UTEID serves as the required log-on protocol to access the computer mainframe, which is the university’s centralized hub that runs all its high-level electronic functions. The university indicates the UTEID is used solely to access the university’s computer mainframe and it has no other significance other than its use as tool for the maintenance, manipulation, or protection of public information. Based on the university’s representations and our review, we find the UTEID contained in the submitted documents does not constitute public information under section 552.002 of the Government Code. Therefore, we conclude the UTEID is not subject to the Act and the university is not required to release it to the requestors.

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 information protected by chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information

Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See Gov’t Code* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find some of the remaining information, which we marked, consists of CHRI that is confidential under section 411.083. Thus, the university must withhold the information we marked under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find you have not demonstrated the remaining information you marked on this basis consists of CHRI for purposes of chapter 411 of the Government Code, and the university may not withhold the remaining information at issue under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, a compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Upon review, we find the information you marked and the additional information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the

university must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the UTEID is not subject to the Act and the university is not required to release it to the requestors. The university must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The university must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university must release the remaining 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/gw

Ref: ID# 695179

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)