



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 14, 2019

Ms. Ana Vieira Ayala
Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2019-16141

Dear Ms. Ayala:

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# 770783 (OGC# 189481).

The University of Texas System (the "system") received a request for specified employee information during a defined time period.¹ You state you will release some information to the requestor. You state you will withhold information subject to section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code.² You claim some of the submitted information is excepted from disclosure under sections 552.101

¹We note the system sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See id* § 552.024(c).

and 552.1235 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴ We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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.2d668, 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. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). However, we note there is a legitimate public interest in an applicant's background and qualifications for government employment. *See* Open Records Decisions 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), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Additionally, this office has found the public has a legitimate interest in information relating to applicants and

³We note the university did not comply with the requirements of section 552.301(e) of the Government Code in providing some of the information at issue. *See* Gov't Code § 552.301(e). Nonetheless, we note sections 552.101 and 552.1235 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

⁴We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

employees of governmental bodies and their employment qualifications and job performance, especially where the applicant was seeking a position in law enforcement. *See* Open Records Decision Nos. 562 at 10 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 (1986), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the information we indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the system must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the system has failed to demonstrate the remaining information it indicated is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the system may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1235 of the Government Code excepts from disclosure “[t]he name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]” Gov’t Code § 552.1235(a). For purposes of this exception, “institution of higher education” is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an “institution of higher education” as meaning “any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section.” Educ. Code § 61.003(8). Because section 552.1235 does not provide a definition of “person,” we look to the definition provided in the Code Construction Act. *See* Gov’t Code § 311.005. “Person” includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2). In this instance, the remaining information contains information pertaining to university donations. Thus, you represent some of the remaining information would identify donors for purposes of section 552.1235. Upon review, we agree the system must withhold information identifying a donor who made a gift, grant, or donation of money or property to the system pursuant to section 552.1235 of the Government Code.

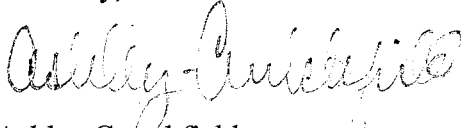
In summary, the system must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The system must withhold information identifying a donor pursuant to section 552.1235 of the Government Code. The system must release the remaining information.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/be

Ref: ID# 770783

Enc. Submitted documents

c: Requestor
(w/o enclosures)