



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 24, 2022

Ms. Cynthia Tynan  
Assistant General Counsel & Public Information Coordinator  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701-2903

OR2022-08528

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# 938018 (OGC# 204045).

The University of Texas at Dallas (the "university") received a request for five categories of information. You state the university will redact certain information subject to section 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670 (2001); motor vehicle record information pursuant to section 552.130(c) of the Government Code; access device numbers pursuant to section 552.136(c) of the Government Code; and certain information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You also state the university will redact public citizens' dates of birth pursuant to the previous

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<sup>1</sup> A governmental body may withhold a peace officer's home address and telephone number, personal cellular telephone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See* Open Records Decision No. 670 (2001); Gov't Code § 552.147(b). Section 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 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

determination issued in Open Records Letter No. 2016-04401 (2016).<sup>2</sup> You state the university will release some of the requested information. You claim some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.139, and 552.140 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note some of the submitted information is not “public information” subject to disclosure under the Act. Section 552.002(a) of the Government Code defines “public information” as information 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.

Gov’t Code § 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. You inform us 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. You also state the UTEIDs are used solely to access the university’s computer mainframe and they have no other significance other than their use as tools for the maintenance, manipulation, or protection of public information. Additionally, we understand a Texas Commission on Law Enforcement (“TCOLE”)

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<sup>2</sup> Open Records Letter No. 2016-04401 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 decision.

<sup>3</sup> We 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 those records contain substantially different types of information than that submitted to this office.

identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Upon review, we find the submitted TCOLE numbers, along with UTEIDs contained in the information at issue, are not "public information" for purposes of the Act, and the university is not required to release this information in response 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." *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as chapter 611 of the Health and Safety Code. Section 611.002 pertains to mental health records and provides, in pertinent part,

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004, 611.0041, or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining "patient" and "professional"). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* Upon review, we find some of the remaining information, which you have marked, consists of a mental health record that is subject to chapter 611 of the Health and Safety Code. Accordingly, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except 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.

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). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find some of the remaining information, which you have marked, consists of CHRI that is confidential under section 411.083. Thus, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code. Section 1701.454 governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code and provides as follows:

- (a) All information submitted to [TCOLE] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.
- (b) Except as provided by this subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The remaining information includes information that was submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, the information at issue does not indicate the officers at issue resigned or were terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 51.971 of the Education Code. Section 51.971 of the Education Code, provides, in relevant part:

- (a) In this section:
  - (1) “Compliance program” means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:
    - (A) ethics and standards of conduct;
    - (B) financial reporting;
    - (C) internal accounting controls; or

(D) auditing.

(2) "Institution of higher education" has the meaning assigned by Section 61.003.

...

(c) The following are confidential:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought guidance from the office, or participated in an investigation conducted under the compliance program; and

(2) information that directly or indirectly reveals the identity of an individual as a person who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the compliance program office of an institution of higher education if, after completing an investigation, the office determines the report to be unsubstantiated or without merit.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

Educ. Code § 51.971(a), (c)-(d). You inform us the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You state the information at issue relates to a completed compliance investigation conducted by the university regarding allegations involving ethical questions and standards of conduct of a university employee. You state the investigation was conducted in response to allegations of misconduct and was initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based upon these representations and our review, we find the information at issue relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You assert the information you have marked is confidential under section 51.971(c)(1) and section 51.971(c)(2). You assert release of the information at issue would directly or indirectly reveal the identities of individuals making reports to or participating in the closed compliance program investigation at issue. Further, you state release of the information at issue would directly or indirectly reveal the identities of individuals who were alleged to have or may have planned, initiated, or participated in the activities at issue regarding the unsubstantiated allegations. You inform us none of the individuals whose information you marked have consented to release of their information. Upon review, we agree release of the information at issue would directly or indirectly identify individuals as participants in a compliance program investigation or the individuals alleged to have participated in the unsubstantiated alleged activities. *See id.* § 51.971(c). Accordingly, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”<sup>4</sup> Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the university must withhold the employees’ dates of birth we have marked under section 552.102(a) of the Government Code.

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). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (employee’s withholding allowance certificate, designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, this office has found the public has a legitimate interest in information relating to applicants and 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 (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 some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov’t Code § 552.108(b)(1); *see also*

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<sup>4</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." See *City of Fort Worth*, 86 S.W.3d at 327. This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. See, e.g., Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. See, e.g., ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the remaining information includes firearm serial numbers that, if released, would interfere with law enforcement or prosecution of crime because the information could be used on illegal firearms or in a false missing weapons report. Further, you assert release of some of the remaining information would interfere with law enforcement by jeopardizing officers' safety and allowing individuals to anticipate weaknesses in law enforcement. Upon review, we find the release of the information you have marked would interfere with law enforcement. Therefore, the university may withhold the information you have marked under section 552.108(b)(1) of the Government Code.

Section 552.139 of the Government code provides, in part, "a photocopy or other copy of an identification badge issued to an official or employee of a governmental body" is confidential. Gov't Code § 552.139(b)(3). You state the information you have marked consists of photocopies of identification cards issued to employees of the university. Therefore, the university must withhold the information you have marked under section 552.139 of the Government Code.

Section 552.140 of the Government Code provides a military veteran's DD-214 form or other military discharge record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. See *id.* § 552.140(a)-(b). The university came into possession of the submitted military discharge records after September 1, 2003. Accordingly, we conclude the university must withhold the military discharge records you have marked under section 552.140 of the Government Code.

In summary, the submitted TCOLE numbers, along with UTEIDs contained in the information at issue, are not “public information” for purposes of the Act, and the university is not required to release this information in response to this request. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The university must withhold the information you have 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 have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code. The university must withhold the employees’ dates of birth we have marked under section 552.102(a) of the Government Code. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university may withhold the information you have marked under section 552.108(b)(1) of the Government Code. The university must withhold the information you have marked under section 552.139 of the Government Code. The university must withhold the military discharge records you have marked under section 552.140 of the Government Code. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Alexandra C. Burks  
Assistant Attorney General  
Open Records Division

ACB/jxd

Ref: ID# 938018

Enc. Submitted documents

c: Requestor  
(w/o enclosures)