



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 27, 1994

Mr. Steve Baker
City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

Open Records Decision No. 622

Re: Whether social security numbers are excepted from public disclosure under section 552.101 of the Open Records Act in conjunction with federal law, and whether the former home addresses and telephone numbers of public employees are excepted from public disclosure under section 552.117(1)(A) of the act (RQ-552)

Dear Mr. Baker:

The City of Galveston (the "city") has received a request for information under the Open Records Act, Gov't Code ch. 552 (formerly V.T.C.S. art. 6252-17a),¹ for the personnel files of two city employees -- a municipal court judge and a bailiff. You have asked this office to determine whether various items in the file are protected under several of the Open Records Act's exceptions to required public disclosure. Your request raises two questions of first impression for this office; first, whether social security numbers are excepted from public disclosure under section 552.101 (formerly section 3(a)(1)) of the Open Records Act in conjunction with a 1990 amendment to the federal Social Security Act and, second, whether the former home addresses and telephone numbers of public employees are excepted from public disclosure under section 552.117(1)(A) (formerly section 3(a)(17)(A)) of the Open Records Act. We address those issues in this formal open records decision. The remaining issues will be addressed in an informal open records ruling.

First, we consider whether social security numbers ("SSNs") are excepted from required public disclosure under section 552.101 of the Open Records Act. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Traditionally, this office has held that SSNs are available to the public under the Open

¹The 73rd Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Records Act. In Open Records Decision No. 169, this office held that SSNs are not protected by common-law privacy, on the basis that nothing in *Industrial Foundation*, the seminal case in this area, suggests that the disclosure of an SSN might involve an invasion of privacy. Open Records Decision No. 169 (1977) at 8; *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). That opinion also concluded that neither the Privacy Act of 1974 nor 1976 amendments to the Social Security Act restrict the disclosure of SSNs. Open Records Decision No. 169 at 8. Thus, the opinion concluded that SSNs are not protected under section 552.101 or section 552.102. *Id.*; *see also* Gov't Code § 552.102 (excepting certain information in personnel files from required public disclosure). The same conclusion has been reached in at least two subsequent decisions of this office. *See* Open Records Decision Nos. 455 (1987); 254 (1980); *see also* Attorney General Opinion H-242 (1974) (SSNs not protected by a constitutional right to privacy).

The city contends that SSNs are protected from public disclosure under section 552.101 of the Open Records Act in conjunction with the Social Security Act, specifically section 405(c)(2)(C)(vii) of title 42 of the United State Code, which was enacted in 1990, and provides as follows:

(I) Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law, enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.

...²

(III) For purposes of this clause, the term "authorized person" means an officer or employee of the United States, an officer or employee of any State, political subdivision of a State, or agency of a

²Subclause (II), omitted above, provides as follows:

(II) Paragraphs (1), (2) and (3) of section 7213(a) of Title 26 shall apply with respect to the unauthorized willful disclosure to any person of social security account numbers and related records obtained or maintained by an authorized person pursuant to a provision of law enacted on or after October 1, 1990, in the same manner and to the same extent as such paragraphs . . . apply with respect to unauthorized disclosures of returns and return information described in such paragraphs. Paragraph (4) of such 7213(a) of Title 26 shall apply with respect to the willful offer of any item of material value in exchange for any such social security account number or related record in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

42 U.S.C. § 405(c)(2)(C)(vii)(II); *see also* note 3 *infra*.

State or political subdivision of a State, and any other person (or officer or employee thereof), who has or had access to social security account numbers or related records pursuant to any provision of law enacted on or after October 1, 1990. For purposes of this subclause, the term "officer or employee" includes a former officer or employee.

(IV) For purposes of this clause, the term "related record" means any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a social security account number is maintained pursuant to this clause.

42 U.S.C. § 405(c)(2)(C)(vii)(footnote added).³

Although the legislative history of section 405(c)(2)(C)(vii) is murky,⁴ its language is broad in scope, and we therefore believe that it makes confidential any SSN obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990. It is clear from the definition of the term "authorized person" that this confidentiality provision applies to any such SSN obtained by a state agency or a political subdivision of the state, such as the city. *See id.* § 405(c)(2)(C)(vii)(III). Furthermore, it is clear from the definition of the term "related record" that this provision prohibits the disclosure of SSNs in any form that would identify a particular SSN as the SSN of a certain individual. *See id.* § 405(c)(2)(C)(vii)(IV).

Our conclusion that section 405(c)(2)(C)(vii) must be broadly applied is also supported by the fact that it was codified with a 1976 amendment to the Social Security Act which authorizes states to use SSNs "in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law," even if they did not do so under a statute or regulation adopted prior to January 1, 1975. 42 U.S.C. § 405(c)(2)(C)(i) & (v); *see also Doyle v. Wilson*, 529 F. Supp. 1343, 1349 (D. Del. 1982); Attorney General Opinion DM-286 (1994). The effect of this 1976 provision is to permit states to require the disclosure of SSNs for these purposes even when they

³Section 408(a)(8), which you also cite, makes it a felony to disclose an SSN in violation of federal law. 42 U.S.C. § 408(a)(8).

⁴Section 405(c)(2)(C)(vii) was enacted as part of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624. This act also required retail food stores applying for authority to accept and redeem food stamps to provide SSNs of their officers and owners to the United States Department of Agriculture ("USDA"), and authorized the Federal Crop Insurance Corporation ("FCIC") to obtain SSNs from policyholders and reinsured companies. Apparently, the provisions ensuring the protection of the privacy of SSNs were adopted in conference committee. *See* HOUSE CONF. REP. NO. 916, 101st. Cong., 2d Sess. 1095, 1183, *reprinted in* 1990 U.S.C.C.A.N. 5620, 5708. For the reasons stated above, however, we do not believe that the confidentiality provision is limited to SSNs obtained by the USDA and the FCIC pursuant to these programs.

might otherwise be prohibited from doing so under the Privacy Act of 1974. *See generally* Attorney General Opinion DM-286 (1994). We note that a subsection of this 1976 provision, 42 U.S.C. § 405(c)(2)(C)(v), may also limit the purposes for which a state agency may disclose an SSN collected in connection with the administration of any general public assistance, driver's license, or motor vehicle registration law. *See* 42 U.S.C. § 405(c)(2)(C)(v); *American Fed'n of State, County and Mun. Employees v. City of Albany*, 725 P.2d 381 (Or. App. 1986) (noting that this provision may prohibit further disclosure of SSNs acquired under its authority); Alaska Attorney General Opinion 211, (1984), 1984 Alas. AG LEXIS 346 (attaching letter from assistant attorney general of United States Department of Justice stating that 42 U.S.C. § 405(c)(2)(C)(v) limits purpose for which state agency may disclose SSN).⁵ Because the city employees' SSNs at issue were obviously not obtained pursuant to any such law, we do not consider the effect of that provision here.

Therefore, we must determine whether the city employees' SSNs in the two requested personnel files are confidential under section 405(c)(2)(C)(vii). As noted above, we conclude that this provision applies to SSNs in the possession of the city, to the extent they are identifiable as the SSN of a particular person. We believe that the SSN of an individual recorded in any fashion in his or her personnel file constitutes a "related record" within section 405(c)(2)(C)(vii)(IV). It is not apparent to us, nor do you assert, however, that any of the SSN information in these files was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. Indeed, the personnel file of the municipal court judge contains documents reflecting his SSN that date from 1965, while the personnel file of the bailiff contains documents reflecting his SSN that date from 1984. Therefore, we have no basis for concluding that any of the SSNs in the file are confidential under section 405(c)(2)(C)(vii), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution the city, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any SSN information in these files, the city should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.⁶

⁵The holding in *American Federation of State, County and Municipal Employees v. City of Albany*, 725 P.2d 381 (Or. App. 1986), that SSNs of state and local government employees are not confidential under federal law predates the 1990 amendment to the Social Security Act. The Alaska attorney general opinion and the United States Department of Justice letter attached, which states that federal law does not restrict the disclosure of SSNs which were voluntarily disclosed to a state agency, also predate those amendments. *See* Alaska Attorney General Opinion 211 (1984), 1984 Alas. AG LEXIS 346 at *9, *18.

⁶We also note that governmental bodies which collect SSNs in connection with the administration of any general public assistance, driver's license, or motor vehicle registration law must

Next, we consider whether former home addresses and telephone numbers of public employees are excepted from public disclosure under section 552.117(1)(A) of the Open Records Act. That provision protects from required public disclosure

information relating to:

(1) the home address or home telephone number of:

(A) a current or former official or employee of a governmental body, except as provided by Section 552.024.

Gov't Code § 552.117(1)(A). Section 552.024 sets forth procedures which a public employee must follow to deny public access to his or her home address and telephone number. In this case, both city employees signed forms prior to the date of the request for their personnel files which indicate that they have elected to deny public access to their home addresses and telephone numbers. At least one of the personnel files contains former home addresses and telephone numbers. It is not apparent from the face of the Open Records Act whether section 552.117(1)(A) excepts the former home addresses and telephone numbers of public employees, nor have we been able to locate an open records decision of this office addressing this issue. We now conclude that former home addresses and telephone numbers are protected under section 552.117(1)(A) for the following reasons.

First, we note the possibility that a former home address and telephone number can be used to obtain a current home address and telephone number. For example, a letter sent to a former home address may be returned to the sender by the United States Post Office with current forwarding address information. Similarly, a person calling a disconnected telephone number may reach a recorded message informing the caller of the current telephone number.

(footnote continued)

consider whether they are precluded from releasing SSNs by section 405(c)(2)(C)(v). See discussion of 42 U.S.C. § 405(c)(2)(C)(v) *supra*.

In addition, we note that the Privacy Act of 1974 requires government agencies which ask an individual to disclose his or her SSN, whether that disclosure is mandatory or voluntary, to "inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it." 5 U.S.C. § 552a note, Pub. L. No. 93 - 579 § 7. See generally Attorney General Opinion (RQ-614) (1994). As no such notice appears to have been given here, we do not address whether the disclosure of an SSN for a use other than one of which the individual has been notified would be prohibited by federal law. We also do not consider here whether an SSN release which could burden a fundamental right would be prohibited by the state or federal constitution. See *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993) (holding that individual's right to vote is substantially burdened to the extent state voter registration statute permits the public disclosure of his SSN).

The legislative history of section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed at home. See House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985). Concluding that former home addresses and telephone numbers are protected by section 552.117(1)(A) is entirely consistent with this purpose. Furthermore, as this office has noted, section 552.117 was also intended to some extent to protect governmental interests:

One purpose of [former sections 3(a)(17) and 3A] may have been to enable governmental bodies to assure employees and prospective employees that their home addresses and telephone numbers need not be divulged. A governmental body which cannot guarantee that this information will be kept confidential after the employment relationship ends is in little better position than one which cannot guarantee any protection at all. To conclude that sections 3A and 3(a)(17) do not protect former employees, therefore, is largely to vitiate whatever governmental interests may underlie these sections.

Open Records Decision No. 455 (1987) at 3. Similarly, we believe that the governmental interests protected by section 552.117(1)(A) would be disserved if it were construed to preclude a governmental body from guaranteeing the confidentiality of a home address or telephone number of an employee who happens to have moved or changed telephone numbers.

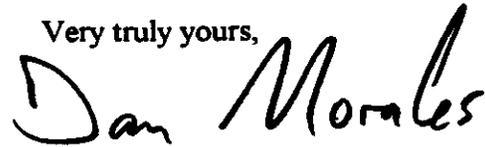
For these reasons, we conclude that the legislature, in enacting section 552.117(1)(A), intended to include former home addresses and telephone numbers in the phrase "information relating to the home address or home telephone number" of a public employee. Therefore, we conclude that public employees' former addresses and telephone numbers are protected from required public disclosure under section 552.117(1)(A). Accordingly, you must redact any information revealing the city employees' former home addresses and telephone numbers before releasing the requested information.

S U M M A R Y

A social security number is excepted from required public disclosure under section 552.101 of the Open Records Act in conjunction with 1990 amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), only if it was obtained or is maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990.

The former home addresses and telephone numbers of public employees are excepted from required public disclosure under section 552.117(1)(A) of the Open Records Act.

Very truly yours,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, flowing style.

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