



Office of the Attorney General
State of Texas

November 9, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Alicia M. Fechtel
General Counsel
Treasury Department
P. O. Box 12608
Austin, Texas 78711

OR92-647

Dear Ms. Fechtel:

The Texas State Treasury Department has received a request for information pursuant to the Texas Open Records Act, article 6252-17a, V.T.C.S. Your letter submitting this matter to us was assigned ID# 17536.

The requestor seeks information, including social security numbers, concerning missing owners of unclaimed property reported to the treasurer pursuant to chapters 72 - 75 of the Property Code. The requestor has also asked to have this information in a specific hard-disk format. You argue that you are not required to provide this information in hard-disk form. You also claim that section 3(a)(1), in combination with section 74.104(b) of the Property Code, protects the social security numbers from public disclosure.

Section 3(a)(1) of the Open Records Act excepts the following information from public disclosure:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision. . . .

Section 74.104(b) of the Property Code provides as follows:

Notwithstanding any other provision of law, the social security number of an owner that is reported to the State Treasurer is confidential.

This provision became effective September 1, 1991. Acts 1991, 72d Leg., ch. 153, §§ 15, 31(a). A brief filed on behalf of the requestor argues that the above

confidentiality provision applies only to social security numbers reported to the treasurer after the effective date of the statute. A similar argument has been raised and rejected by the Texas Supreme Court with respect to the Open Records Act itself. See *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The Industrial Accident Board argued that prior to the effective date of the Open Records Act, it had authority to keep compensation claims confidential; therefore, claims filed before the effective date of the Open Records Act should remain confidential. 540 S.W.2d at 677. The supreme court answered as follows:

[I]t is clear that the Act is intended to apply to all records kept by governmental bodies, whether acquired before or after the Act's effective date. No exception is made for records which were considered confidential prior to June 14, 1973.

Nothing in section 74.104 of the Property Code indicates that it applies only to social security numbers reported after its effective date. It applies to the social security numbers of unclaimed property owners in the treasurer's office on the effective date of section 74.104 and those reported afterwards.

The brief also argues that the treasury has waived section 74.104(b) of the Property Code by failing to refer a previous request from the same individual to this office pursuant to section 7 of the Open Records Act. We cannot address any questions of evidence or fact that are relevant to this argument, nor is it necessary to resolve them, because this question can be answered as a matter of law. A governmental body cannot waive an express confidentiality statute by failing to comply with the deadline set out in section 7 of the Open Records Act. Open Records Decision No. 150 (1977). A governmental body does not have authority to waive an express confidentiality provision adopted by the legislature. See Tex. Const. art. I, § 28; Attorney General Opinions M-1190 (1972); O-6444 (1945).

Accordingly, section 71.104(b) of the Property Code makes confidential the social security numbers of owners reported to the treasurer. The legislature's intent is found in the plain meaning of the statute and we may not look to extraneous matters to read into it an intention not expressed therein. See *Government Personnel Mutual Life Ins. Co. v. Ware*, 251 S.W.2d 525 (Tex. 1952); *Baylor University Medical Center v. Borders*, 581 S.W.2d 731 (Tex. Civ. App.--Dallas 1979, writ ref'd n.r.e.); *Railroad Com. of Texas v. Texas & N. O. R. Co.*, 42 S.W.2d 1091 (Tex. Civ. App.--

Austin 1931, writ ref'd). You are prohibited by this statute from disclosing the social security numbers of owners of unclaimed property to the requestor.

You state that the information requested, except for social security numbers, is available for sale to the general public on microfiche. *See* Property Code § 74.307 (list of names and addresses of owners and of amount credited to each account is available for public inspection). You object to providing it in hard disk form.

The Open Records Act requires a governmental body to provide "suitable copies" of public records. V.T.C.S. art. 6252-17a, § 9(c). This office has made the following statement about a governmental body's duty to provide "suitable copies" to a requestor:

What form of copies may be "suitable" could vary depending upon the nature of the requested information. While it is not possible or necessary here to speculate upon every circumstance in which a suitable copy might consist of some form other than an ordinary paper reproduction, we can point, for example, to records on videotape or audio tape where a paper transcription would be an inadequate substitute for the medium in which the information was originally recorded. With respect to deed records, however, it seems an ordinary paper copy would, in every case, be suitable to convey the information contained in the record to any member of the public.

...

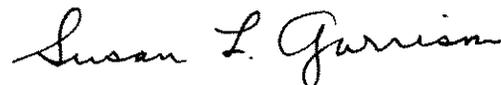
While this provision [section 9(b) of the Open Records Act] certainly does not preclude the possibility that records may be provided in media other than paper, it imposes no specific duty on custodians of public records to provide records in any specific medium other than paper.

Attorney General Opinion DM-30 (1991) (overruling Attorney General Opinion JM-95 (1983)).

Accordingly, the Open Records Act does not require you to provide the requested information in hard disk format. Your duty under the act is to provide paper copies or other "suitable copies" of the information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-647.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

SLG/lmm

Ref.: ID# 17536
ID# 17954

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