



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1995

Ms. Myra C. Schexnayder
Assistant School Attorney
Houston Independent School District
Hattie Mae White Administration Building
3830 Richmond Avenue
Houston, Texas 77027-5838

OR95-104

Dear Ms. Schexnayder:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 26961.

The Houston Independent School District ("HISD") has received two requests for certain information regarding HISD employees. We understand that you have released all the information sought in both requests except for the requested social security numbers. You apparently contend that you must withhold the social security numbers of employees hired after April 1, 1986, because they are required to pay the Medicare portion of the social security tax. You contend that the social security numbers of employees who are required to pay the Medicare portion of the social security tax were obtained pursuant to a law enacted on or after October 1, 1990.

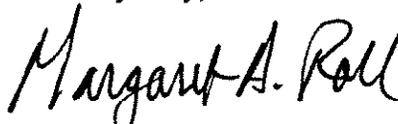
Title 42, section 405(c)(2)(C)(vii)(I) of the United States Code makes confidential social security numbers "that are obtained or maintained . . . pursuant to any provision of law, enacted on or after October 1, 1990." As was indicated in Open Records Decision No. 622 (1994), a governmental body must determine under what authority it obtained a particular social security number and the effective date of that law to determine whether the social security number must be withheld. We recognize that this test means a governmental body may be required to release the social security numbers of some employees and to withhold the social security numbers of other employees.

In this case, the requestor's attorney identified section 3121(u) of the Internal Revenue Code as the provision under which the HISD obtains the social security numbers of employees who are required to pay the Medicare portion of the social security tax.¹ Section 3121(u) was enacted in 1986 and amended in 1988.² Therefore, if the HISD obtained any of the requested social security numbers under section 3121(u) of the Internal Revenue Code, section 405(c)(2)(C)(vii)(I), title 42, does not make these social security numbers confidential.

Based on the information you provided us, we are unable to determine whether any of the social security numbers at issue here were obtained under any other provisions of law. Therefore, we cannot say definitively that the requested social security numbers should be released to the public. Although this office is capable of opining on whether a particular statute is a provision of law enacted on or after October 1, 1990, we are not in a position to determine what law gives another governmental body authority to obtain a social security number. If you want any further guidance on the application of title 42, section 405(c)(2)(C)(vii)(I) of the United States Code to particular social security numbers, you must identify the particular provisions of law under which the social security numbers were obtained.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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¹Although we cannot see how section 3121(u) requires the collection of social security numbers, we assume that the requestor's attorney is correct because you did not disagree with his assertion.

²Section 3121(u) was also amended in August of 1994. However, all the social security numbers subject to this request were obtained under the provision of law before it was amended. See Open Records Decision No. 452 (1986) at 2-3 (concluding that a request does not encompass information created or obtained after the request is made). Therefore, even if provisions of law enacted on or after October 1, 1990, include provisions of law amended on or after October 1, 1990, the requested social security numbers in this cases were not obtained under the amended provision..

Ref.: ID# 26961

cc: Wayne Dolcefino
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