



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 12, 1996

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR96-0167

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38106.

The Texas Department of Transportation (the "department") received a request for a certain employee's insurance election form. You contend that portions of this document are excepted from required public disclosure under section 552.117 of the Government Code.

Sections 552.024 and 552.117 of the Government Code were amended by the Seventy-fourth Legislature to include social security numbers and information revealing whether a government employee has family members. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, §§ 5, 9, 1995 Tex. Sess. Law Serv. 5127, 5130, 5132. In pertinent part, section 552.117 excepts from disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether the following persons have family members: all peace officers, as defined by article 2.12 of the Code of Criminal Procedure; security officers commissioned under Education Code section 51.212; and all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Gov't Code § 552.117. Therefore, if the employee has made the election under section 552.024 of the Government Code to keep that information confidential, section 552.117 requires that the department redact that information prior to releasing the requested information. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the home address, telephone number, social security number, or family information of an official or employee who made the request for confidentiality under section 552.024 after the request for information was made.¹ Whether a particular piece of information is public must be

¹A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C.

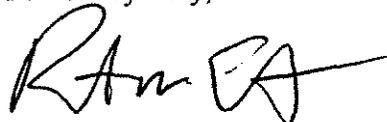
determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

You indicate that the employee in the situation at hand requested that this information be kept confidential. Assuming this election of confidentiality was made in conformance with the requirements of section 552.024 and was made *prior* to receipt of the open records request at hand, you must withhold this information. We have marked the information that is excepted under section 552.117.

Furthermore, certain employee information is excepted from required public disclosure under common-law privacy. Open Records Decision No. 600 (1992). On the Employee Retirement System form that you have submitted, information in section C, and sections D, E, F, G, and H are excepted from disclosure under common-law privacy. *See id.* at 9-11. Accordingly, you must withhold this information from required public disclosure under section 552.101 of the Government Code.

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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/LBC/ch

Ref: ID# 38106

Enclosures: Submitted documents

(Footnote continued)

§ 405(c)(2)(C)(viii)(I). In relevant part, the 1990 amendments to the federal Social Security Act make confidential social security account numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We caution, however, that an employer may be required to obtain an employee's social security number under laws that predate October 1, 1990; a social security number obtained under a law that predates October 1, 1990, is not made confidential by the 1990 amendments to the Social Security Act. Based on the information that you have provided, we are unable to determine whether the social security number at issue is confidential under federal law. On the other hand, section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing *any* social security number, you should ensure that it was not obtained pursuant to a law enacted on or after October 1, 1990.