



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1996

Ms. Tamara Armstrong
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR96-0434

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34954.

Travis County (the "county") received a request for copies of all documents relating to "any proceedings involving Mr. Matthew Worthington." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

You claim that certain information in Exhibit "A" is excepted by section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. We have reviewed the information in Exhibit "A" and agree that the county must withhold it under section 552.101.

You claim that the Private Investigators and Private Security Agencies Act excepts portions of the requested information from disclosure. The pertinent section of this act provides:

Any licensee or officer, director, partner, or manager of a licensee shall divulge to any law enforcement officer or a criminal district attorney, or his representative, any information he may acquire as to any criminal offense, but he shall not divulge to any other person except as he may be required by law so to do, any information

acquired by him except at the direction of the employer or client for whom the information was obtained.

V.T.C.S. art. 4413(29bb), § 28(a). You claim that the information provided to the district attorney maintains whatever confidentiality it had in the hands of a security agency. We disagree. This statute, unlike the Medical Practices Act, does not provide any confidentiality for re-release of information submitted by a security agency to a law enforcement officer or the district attorney. *Cf.* V.T.C.S. art. 4495b, § 5.08 (j)(3). Therefore, the county may not withhold the requested information under article 4413(29bb), § 28(a).

Among the documents submitted to this office for review is an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of the requested document under the Open Records Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that Form I-9 is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system. Additionally, the W-4 forms submitted to this office for review are excepted from disclosure by 26 U.S.C. § 6103(a). Open Records Decision No. 600 (1992).

Federal law may prohibit disclosure of an individual's social security number. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of chapter 552 of the Government Code imposes criminal penalties for the release of confidential information.

Section 552.101 also encompasses both common-law and constitutional privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the documents submitted for our consideration and have marked the information that must be withheld under constitutional or common-law privacy.

We next address your contention that section 552.111 in conjunction with the attorney work-product doctrine excepts the information in Exhibits "B," "C," and "D" from disclosure. In the past, this office has concluded that in the context of the Open Records Act the work-product doctrine applies only upon a showing that section 552.103(a) applies. *See* Open Records Decision No. 575 (1990). However, the issues you raise with respect to attorney work product are the subject of pending litigation which is now on appeal to the Texas Supreme Court. *See Holmes v. Morales*, 906 S.W.2d 570 (Tex. App.--Austin 1995, writ granted). In light of the pendency of this litigation, ruling on your claims regarding work product would be inappropriate for this office. At this point, the outcome of the *Holmes* case may resolve your claims and may moot any decision this office might reach on those claims. For these reasons, we decline to rule on the issues you raise regarding attorney work product, and you may withhold the requested information pending the outcome of the *Holmes* case.

We also remind you that even if section 552.103 or section 552.111 excepts attorney work product from required public disclosure under the Open Records Act, both exceptions are discretionary. See Gov't Code § 552.007; Open Records Decision Nos. 542 (1990) at 4, 464 (1987) at 5. Section 552.007 provides as follows:

(a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) *Public information* made available under Subsection (a) must be made available to any person. [Emphasis added.]

The county attorney may, therefore, choose to release to the public some or all of the requested records that may be work product.

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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 34954

Enclosures: Marked documents

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