



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 24, 1996

Ms. Cheryl N. Elliott
University General Counsel
Texas Southern University
3100 Cleburne Avenue
Houston, Texas 77004

OR96-0795

Dear Ms. Elliott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36732.

Texas Southern University (the "university") received an open records request for the personnel action forms for certain specified individuals. You assert that the requested information is excepted from disclosure under section 552.102 of the Government Code. You have provided us with a copy of the information you seek to withhold.

Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Although section 552.102 is designed to protect public employees' personal privacy, the scope of this exception is very narrow. See Open Records Decision No. 336 (1982); see also Attorney General Opinion JM-36 (1983). The test for section 552.102 protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.-Austin 1983, writ ref'd n.r.e.).

The information you wish to withhold relates to the salary and job duties of public employees. This office has long held that information relating to a public employee's salary and job position is clearly public information. Open Records Decision No. 342

(1982) at 3 (name, position, experience, tenure, salary and education long held to be disclosable). This information is not highly intimate or embarrassing and there exists a legitimate public interest in this information. *See* Open Records Decision No. 165 (1977). Thus, the information you have submitted is not excepted under either sections 552.101 or 552.102 and must be disclosed.

We note, however, that some of the requested personnel forms include the home address, phone number, and social security number of university employees. It is possible that this information may be confidential under section 552.117, and therefore, this specific information, depending on the specific circumstances, may not be released. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the home telephone number or social security number of a current or former employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the home telephone number or social security number of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

Furthermore, a social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 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 home addresses, phone numbers and social security numbers at issue are confidential. Please note that distribution of confidential information constitutes a criminal offense, as does the failure to provide access to public information. *See* Gov't Code §§ 552.352-.353.

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,

A handwritten signature in black ink, appearing to read "RWS" followed by a stylized flourish.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

Ref.: ID# 36732

Enclosures: Submitted documents

cc: Ms. Nancy King
3100 Cleburne Avenue
Houston, Texas 77004
(w/o enclosures)