



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 21, 1996

Ms. Kathryn A. Reed
General Counsel
Texas Animal Health Commission
P.O. Box 12966
Austin, Texas 78711-2966

OR96-1509

Dear Ms. Reed:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100211.

The Texas Animal Health Commission received a request for information concerning a particular criminal investigation. Although you indicate that you are willing to provide the requestor with some of the requested information, you assert that certain information is exempted from disclosure under sections 552.101, 552.103, 552.107, 552.111, and 552.117 of the Government Code.

First, you state that you intend to provide the requestor with access to certain information and have provided our office with representative samples of this information.¹ You ask our office to confirm that the home address, home telephone numbers, social security numbers, and information that reveals whether an individual has family members must be withheld from disclosure under section 552.117. Section 552.117(1) exempts from disclosure the social security number, information that reveals

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Government Code § 552.301(b)(3) (governmental body may submit representative samples of information if voluminous amount of information was requested); see also Open Records Decisions Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

whether a person has family members, and the current and former home addresses and telephone numbers of a current or former officer or employee of a governmental body that has elected to keep this information protected under section 552.024. Open Records Decision No. 622 (1994). Accordingly, this information must be withheld if the current or former employee of a governmental body made a request for confidentiality under section 552.024 before this request for information was received by the city. See Open Records Decision No. 530 (1989). Additionally, social security numbers may also be confidential under the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if they were obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).

We note that the information you intend to release also contains other information that is confidential by law and may not be released pursuant to section 552.101 of the Government Code. Form W-4, the Employee's Withholding Allowance Certificate, is confidential as tax return information under title 26, section 6103(a) of the United States Code. Open Records Decision No. 600 (1992) at 8-9. This office has also determined that information revealing the designation of beneficiaries of insurance and retirement funds is confidential under the right of privacy. *Id.* at 10. Additionally, information regarding an employee's personal financial decisions, including an employee's choice of insurance carrier, optional insurance coverage, and participation in Tex Flex programs is also confidential under common-law privacy. *Id.* at 9-11. You must withhold this information from disclosure.

We now consider whether the remainder of the requested information may be withheld. You assert that this information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 638 (1996) at 2-4, 551 (1990) at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). Open Records Decision No. 638 (1996) at 2.

You have shown that the requested information relates to a currently pending criminal indictment and have submitted a letter to this office from the district attorney requesting that the information not be released. Thus, we conclude that you have met your burden under section 552.103(a), and that you may withhold the requested information under section 552.103 of the Government Code.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).²

We are resolving this matter with this 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 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/rho

Ref.: ID# 39655

Enclosures: Submitted documents

cc: Mr. Don Glenn
P.O. Box 1140
Seymour, Texas 76380
(w/o enclosures)

²As we have held that the commission may withhold the requested information under section 552.103, we do not address the other exceptions to disclosure that you raise.