



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 23, 1997

Mr. Jesus Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR97-0135

Dear Mr. Toscano:

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# 36930.

The City of Dallas (the "city") received an open records request for records that contain city employees' personnel identification and social security numbers. You contend that these two categories of information are excepted from required public disclosure by sections 552.024, 552.101, and 552.117 of the Government Code.

You first contend that city employees' personnel identification numbers should be withheld from the public pursuant to section 552.101 of the Government Code because these numbers would reveal the six-digit account numbers of those employees who are members of the City Employees Credit Union. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception applies to information made confidential by the common-law right to privacy. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Id.*

Financial information concerning an individual is in some cases protected by a common-law right of privacy. See Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that "all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it

constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 (1983) at 3. As we believe that no legitimate public interest exists in city employees' credit union account numbers, we conclude that the city must withhold the personnel identification numbers of those employees who are members of the credit union. All remaining identification numbers must be released.

We next address whether city employees' social security numbers are subject to required public disclosure. You first contend that the social security numbers are made confidential under section 405(c)(2)(C)(vii)(I), title 42, of the United States Code, which 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), governmental bodies must determine under what authority they obtained or maintained particular social security numbers and the effective date of those laws.

You identify sections 3101 and 6109 of the Internal Revenue Code as the provisions under which the city obtained the employees social security numbers. Section 3101 was originally enacted in 1954 as part of the Federal Insurance Contributions Act. Act of August 16, 1954, c. 736, 68A Stat. 415, 1954 U.S.C.C.A.N. Section 6109 was originally enacted in 1961. *See* Act of October 6, 1961, Pub. L. No. 87-397. In regard to the confidentiality of social security numbers, the germane issue under section 405(c)(2)(C)(vii)(I) is the time those statutes were enacted. Because the statutes under which the city obtained the employees social security numbers were enacted prior to October 1, 1990, section 405(c)(2)(C)(vii)(I) does not make the numbers confidential. We are aware of no other statute enacted after October 1, 1990 that would make the social security numbers obtained by the city confidential under section 405(c)(2)(C)(vii)(I), nor are we aware of any statute enacted after October 1, 1990 that requires the city to maintain those social security numbers. We therefore conclude that the city may not withhold any of the requested social security numbers under section 552.101 of the Government Code.

You also contend that city employees' social security numbers are excepted from required public disclosure pursuant to sections 552.024 and 552.117 of the Government Code. Section 552.117(1) of the Government Code was amended in the past legislative session to except from required public disclosure, among other things, a public employee's social security number, but only if the employee elected to have the social security number withheld from the public in accordance with section 552.024.

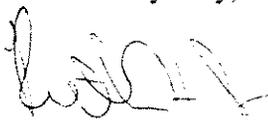
The effective date of the amendment to section 552.117 was September 1, 1995. *See* Acts 1995, 74th Leg., R.S., ch. 1035, § 29, at 5142. You indicate in your brief to this office that as of the date the city received the open records request, October 25, 1995, none of the city's employees had made the election to have this information withheld pursuant to section 552.024. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 (1989) at 5 (governmental body may not solicit section 552.024 election from employees in response to pending open

records request). Because the requirements for non-disclosure have not been met in this instance, we conclude that the city must release to the requestor all of the requested social security numbers, with the following exceptions.

Section 552.117(2) protects, among other things, the social security number of "a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code." Unlike other public employees, a peace officer need not affirmatively claim confidentiality for section 552.117 information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). The city therefore must withhold all peace officers' social security numbers from the requestor.

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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/RWP/ch

Ref.: ID# 36930

cc: Mr. Todd Gillman  
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