



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 27, 1997

Ms. Joanne Wright  
Associate General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Bldg.  
125 E. 11th Street  
Austin, Texas 78701-2483

OR97-2377

Dear Ms. Wright:

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# 109567.

The Texas Department of Transportation (the "department") received an open records request for the employment benefits of a recently deceased department employee. You observe that while there is no common-law right of privacy on behalf of a person who is deceased, you seek to withhold the same information on behalf of the beneficiaries of the deceased pursuant to common-law privacy, as incorporated into section 552.101 of the Government Code.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right of privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

Financial information concerning an individual may be protected by a common-law right of privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). This office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 545 (1990), 523 (1989). However, information concerning financial transactions between an

employee and a public employer is generally of legitimate public interest. *Id.* Therefore, financial information relating to retirement benefits must be disclosed if it reflects the employee's mandatory contributions to the state retirement system. Open Records Decision No. 600 (1992). Thus you must disclose this information.

On the other hand, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an option benefits plan offered by the city or state. *Id.* We have previously determined that information revealing the designation of beneficiaries of insurance and retirement funds is confidential under common-law privacy and excepted from disclosure. Open Records Decision Nos. 600 (1992), 373 (1983). To the extent that this information is present under the instant request, that information must be withheld.<sup>1</sup>

Additionally, we note that sections 552.024 and 552.117 of the Government Code provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members. The department must withhold this information if the employee had elected to keep the information private. Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987). We also note that social security numbers that were obtained or maintained by a government body pursuant to any provision of law, enacted on or after October 1, 1990, are confidential pursuant to section 405(c)(2)(C)(viii) of title 42 of the United States Code. Consequently, you must release the information subject to the exceptions.

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,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>We do not address any special rights of access a parent may have for any information concerning minor unemancipated children in this instance.

Ref.: ID# 109567

Enclosures: Submitted documents

cc: Mr. Adolfo Guzman  
10612 Hard Rock Rd.  
Austin, Texas 78750  
(w/o enclosures)