



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 6, 1998

Ms. Martha M. Dominguez
Interim Records Management Officer
Ysleta Independent School District
9600 Sims Drive
El Paso, Texas 79925-7225

OR98-0369

Dear Ms. Dominguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112292.

The Ysleta Independent School District (the "district") received a request for information relating to applications for payment made to the district by Graham Construction Company, and records of any payments to Graham by the district for work performed on a certain project. You claim that the names, social security numbers, and home addresses contained in payroll records which are responsive to the request are excepted from disclosure under sections 552.101, 552.117 and 552.305 of the Government Code. You have submitted a sample of the requested information.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of current or former government employees or officials and peace officers, as well as information revealing whether those employees, officials, or officers have family members. This section, by its terms, does not apply to anyone but current or former government employees, officials, and peace officers. As you admit that these employees of a subcontractor are not employed by the district or any other governmental body, the district may not withhold the requested information under section 552.117 of the Government Code.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision 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.

Further, privacy does not protect the names, home addresses, marital status and social security numbers from required public disclosure. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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 of the South 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). This office has previously concluded that home addresses are not "intimate" information, and are therefore not protected as to private citizens. Open Records Decision Nos. 478 (1987), 455 (1987), 254 (1980).

We note that the social security numbers in the payroll records may be confidential under federal law. 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 the Open Records Act imposes criminal penalties for the release of confidential information.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 112292

Enclosures: Submitted documents

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(w/o enclosures)