



September 11, 2000

The Honorable Elton Bomer
Secretary of State
P.O. Box 12697
Austin, TX 78711

Open Records Decision No. 667

Re: Whether the Texas Department of Criminal Justice may include a felon's social security number with information that it is required to file with local county voter registrars pursuant to section 16.003 of the Election Code and, if so, whether the transferred social security number remains confidential or becomes public in the possession of the voter registrar. (ORQ-51)

Dear Secretary Bomer:

You ask whether the Texas Department of Criminal Justice ("TDCJ") may include a felon's social security number with information that it is required to file with local county voter registrars pursuant to section 16.003 of the Election Code without waiving any of the Public Information Act's (the "Act"), Gov't Code ch. 552, exceptions to public disclosure. In addition, you ask whether the transferred social security number would remain confidential or become public in the possession of the voter registrar.

Section 16.003 of the Election Code requires TDCJ to provide county voter registrars with certain information pertaining to its inmates. Section 16.003 states as follows:

- (a) Each month the institutional division of the Texas Department of Criminal Justice shall prepare an abstract of each final judgment received by the institutional division, occurring in the month, convicting a person 18 years of age or older who is a resident of the state of a felony.
- (b) The institutional division of the Texas Department of Criminal Justice shall file each abstract with the voter registrar of the person's county of residence not later than the 10th day of the month following the month in which the abstract is prepared.

You explain that in order to identify voters accurately, voter registrars must rely on unique voter identification information such as a voter's social security number or driver's license or personal identification number. Thus, you state that it would be helpful to the voter registrars if TDCJ could include an inmate's social security number with the abstract that TDCJ is required to file with the voter registrars.

First, we will consider whether TDCJ may include a felon's social security number with information that it is required to file with local county voter registrars pursuant to section 16.003 of the Election Code without waiving any of the Act's exceptions to public disclosure. In order to answer this question, we must first examine whether an inmate's social security number maintained by TDCJ is confidential.

Section 552.131 of the Government Code makes confidential information obtained or maintained by TDCJ that relates to an inmate who is confined in a facility operated by or under a contract with TDCJ. Gov't Code § 552.131(a). However, section 552.131(b) provides that subsection (a) does not apply to "information about an inmate sentenced to death." Gov't Code § 552.131(b)(2). Hence, a death row inmate's social security number is not confidential under section 552.131.

However, a death row inmate's social security number is confidential under section 552.107(2) of the Government Code. Section 552.107(2) excepts information from required public disclosure if a court by order has prohibited disclosure of the information. Gov't Code § 552.107(2). The final judgment in *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and rev'd in part*, 679 F.2d 1115, *amended in part and vacated in part, reh'g denied*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983), restricts the dissemination of "sensitive information" regarding all inmates, including death row inmates. *See* Open Records Decision No. 560 (1990) (judgment's prohibition against prisoners obtaining sensitive information would be thwarted by release of such information to general public). Furthermore, the Texas Board of Criminal Justice (the "board") was given the authority to define the term "sensitive information" to include all information regarding TDCJ-ID offenders not required to be disclosed pursuant to section 552.029 of the Government Code. Thus, the board has determined that information that is within one of the categories delineated in section 552.029 is not "sensitive information" that the department may withhold from the public under section 552.107(2) in conjunction with the *Ruiz* decision. An inmate's social security number is not information that falls under

section 552.029.¹ Therefore, death row inmates', as well as other inmates' social security numbers, are confidential under section 552.107(2) in conjunction with *Ruiz*.

Having concluded that inmates' social security numbers maintained by TDCJ are confidential, we next consider whether TDCJ may release them to voter registrars. We conclude that TDCJ may, at its discretion, release the social security numbers made confidential by sections 552.107(2) and 552.131 to voter registrars.

Whether a governmental entity may release information to another governmental entity is not answered by the Act. The Act is concerned with the required release of information to the *public*. Gov't Code §§ 552.001, .002, .021; *see* Attorney General Opinions H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision No. 655 (1997). The question then becomes, we believe, a question of policy.

For many years, this office has recognized that it is the public policy of this State that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e.g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same);

¹The categories of information enumerated in section 552.029 are:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible release dates;
- (6) the inmate's parole date or earliest possible parole date;
- (7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or
- (8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Open Records Decision Nos. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 661 (1999) (Deep East Texas Council of Governments has discretion to release confidential address information to county judge for purpose of sending tax and voter registration notices), 655 (1997), 414 (1984). Accordingly, TDCJ has the discretion to release an inmate's social security number to voter registrars for the purpose of maintaining accurate voter registration lists.

Finally, you ask whether the transferred social security number would remain confidential or become public in the possession of the voter registrar. As we stated above, information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies so as to effectively carry out the business of the State. Open Records Decision No. 661 (1999) (Deep East Texas Council of Governments has discretion to release confidential address information to county judge for purpose of sending tax and voter registration notices). Thus, the transferred social security number remains confidential in the possession of voter registrars.

SUMMARY

The Texas Department of Criminal Justice has discretion to release an inmate's social security number made confidential by sections 552.107(2) and 552.131 of the Government Code to voter registrars for the purpose of maintaining accurate voter registration lists. The transferred social security number remains confidential in the possession of the voter registrars.

Yours very truly,

A handwritten signature in black ink that reads "John Cornyn". The signature is written in a cursive style with a large, stylized initial "J".

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