



May 10, 1999

Mr. W. Daniel Vaughn
McLeod, Alexander, Powel & Apffel
P.O. Box 629
Galveston, Texas 77553

OR99-1257

Dear Mr. Vaughn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123946.

The Board of Trustees of the Galveston Wharves (the “wharves”) received three requests for the payroll and pension records of a former employee. You have submitted a representative sample of this information for our review.¹ You indicate that you have released most of the requested information but that you seek to withhold portions, which you have identified, claiming that they are excepted from public disclosure by section 552.101 of the Government Code in conjunction with common law right of privacy, or by section 552.117 of the Government Code.. We have considered the exceptions you claim and have reviewed the subject information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 6103(a) of title 26 the United States Code renders tax return information confidential. The term “return information” has been interpreted by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp 748 (M.D.N.C. 1989). You have submitted copies of W-2 forms as your “exhibit E.” This office has specifically held W-2 forms to be confidential in their entirety. Open Records Decision Nos. 600 (1992), 523 (1989), 226 (1979). All of the information submitted in your exhibit E must be withheld.

We note that you have redacted information about employees that were not the subject of this request. As that information is not responsive to the request, it need not be released. You have also redacted social security number information, contending that it is excepted from

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.

disclosure by section 552.117 of the Government Code. This section excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, or personal family members information of public employees who request that this information be kept confidential under section 552.024. Section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold information under this exception for a current or former employee who made the request for confidentiality under section 552.024 after a request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). In this case, you present documentation that indicates that the subject employee elected to prohibit disclosure of the subject information on February 11, 1999. As the requests for information were received on February 1, 4 and 5, of 1999, the employee's election does not prohibit the disclosure of the requested information.

However, a social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

As the above discussion reaches all of the information submitted, we do not address your argument raised under common law privacy. 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.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 123946

encl. Submitted documents

cc: Mr. Carter Thompson
Galveston County Daily News
P.O. Box 628
Galveston, Texas 77553
(w/o enclosures)