



November 12, 1999

Ms. Susie Melinger Green
Assistant City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR99-3232

Dear Ms. Green:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130612.

The City of Galveston (the "city") received a request for six categories of information, three of which pertain to a named city employee's personnel records.¹ You have submitted copies of the responsive records. You claim only that they contain certain information that is excepted from disclosure pursuant to section 552.117 of the Government Code. We have considered the exception you claim and have reviewed the documents you submitted.

Section 552.117 of the Government Code excepts from disclosure the home address, telephone number, social security number and family member information of a current or former official or employee of a governmental body who requests that such information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117 must be determined at the time the request for its disclosure is made. *See* Open Records Decision No. 530 (1989). The city may withhold an employee's home address, telephone number, social security number and family member information pursuant to section 552.117 only to the extent that the employee elected to keep such information confidential prior to receipt of the pertinent records request. In this instance, the employee's request for confidentiality is confined to his home address and telephone number. Accordingly, the employee's social security number and family member information may not be withheld pursuant to section 552.117.

Nevertheless, the employee's social security number may be excepted from disclosure under section 552.101 of the Government Code, which excepts from required public disclosure

¹Your letter does not address three of the six categories of requested information, and a hand-written notation on the copy of the open records request that you attached indicates that you have released the information responsive to those three categories. Therefore, this office will assume that you have released that information and will address only the personnel records that you submitted.

information that is made confidential by law, either constitutional, statutory, or by judicial decision. In this instance, federal law may prohibit disclosure of the employee's social security number. A social security number is excepted from required public disclosure under section 552.101, in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number 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 that you have provided, we are unable to determine whether the social security number in question here is confidential under the federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for release of confidential information. Therefore, prior to releasing any of the employee's social security number information, the city should ensure that it is not confidential under the federal statute.

We further note that the employee's personnel file includes an Employment Eligibility Verification (Form I-9). Section 1324a of title 8 of the United States Code provides that a Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of the employee's Form I-9 under chapter 552 of the Government Code would be "for purposes other than for enforcement" of the referenced federal statutes. Therefore, the employee's Form I-9 is excepted from public disclosure pursuant to section 552.101 of the Government Code and may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system.

We also note that the submitted records contain information that is excepted from public disclosure under common-law privacy. Such information is excepted from disclosure under section 552.101 of the Government Code and the common-law right to privacy if (1) 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 (2) the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Protection of personnel files under section 552.102(a) of the Government Code is co-extensive with common-law privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. – Austin 1983, writ ref'd n.r.e.).² Unless it reflects a transaction between the employee and a governmental body, personal financial information contained in personnel files usually is excepted from public disclosure under the common-law privacy test. *See Open Records Decision Nos. 600 (1992)* (information about public employee's participation in a group insurance program, retirement benefits

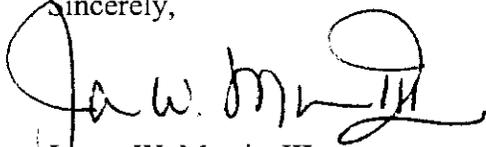
²We note that you do not raise a claim under section 552.101 or section 552.102. Ordinarily this office does not address an exception that a governmental body has failed to claim. However, this office will address sections 552.101 and 552.102 on behalf of a governmental body because release of confidential information could adversely affect third parties and because improper release of such information is a misdemeanor. *See Gov't Code § 552.352.*

beneficiaries, tax exempt reimbursement accounts, and direct deposit), 545 (1990) (information about a public employee's participation in a deferred compensation plan). We have marked the information that you must withhold.

Finally, the submitted documents also contain information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130(a)(1) excepts from public disclosure "information relat[ing] to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Pursuant to section 552.130, you must withhold the copy of the employee's driver's license and his driver's license number where it appears in the submitted documents.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 130612

Encl. Submitted documents

cc: Mr. Jim Mabe
3114 Seawall Boulevard
Galveston, Texas 77550
(w/o enclosures)