



November 18, 1999

Mr. Ted E. Michael  
Sam Houston State University  
Human Resources Department  
Frels Building  
Huntsville, Texas 77341-2356

OR99-3305

Dear Mr. Michael:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130031.

Sam Houston State University (the "university") received a request for the merit review forms and staff evaluation summaries for all 52 employees of the university's custodial department. You have written to our office for a determination as to whether the information may be withheld pursuant to the Public Information Act.

Pursuant to section 552.301(b), a governmental body is required to ask for the attorney general's decision and state the exceptions that apply to withhold the requested information within a reasonable time but not later than the 10th business day after the date of receiving the written request.<sup>1</sup> You failed to state the exceptions which would allow the information to be withheld within 10 business days after receipt of the request for information. Therefore, as provided by section 552.302, the information that is the subject of this request for information is presumed to be public information.<sup>2</sup> Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown such a compelling interest to overcome the presumption that the information at issue is public.

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<sup>1</sup>Act of May 25, 1999, Leg., R.S., ch. 1319, § 20, 1999 Tex. Sess. Law Serv. 4500, 4509 (Vernon) (to be codified as an amendment to Gov't Code § 552.301).

<sup>2</sup>Act of May 25, 1999, Leg., R.S., ch. 1319, § 21, 1999 Tex. Sess. Law Serv. 4500, 4509 (Vernon) (to be codified as an amendment to Gov't Code § 552.302).

*See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Consequently, you have not met your statutory burden. *Gov't Code* § 552.301. The requested information is therefore presumed public. In the absence of a demonstration that the requested information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978).

We note, however, that portions of the information at issue may be confidential and must not be released.<sup>3</sup> The submitted documents contain social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. 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 submitted information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We remind you, however, that section 552.353 of the Public Information Act 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 by the university pursuant to any provision of law, enacted on or after October 1, 1990.

Additionally, Government Code section 552.117 excepts from disclosure the home addresses, telephone numbers, and social security numbers of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. The university may not, however, withhold this information for a current or former official or employee who made a request for confidentiality under section 552.024 after the request for this 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). You have not submitted to this office information that demonstrates that the university employees elected to keep their social security numbers confidential prior to the date on which the university received the request for information. Thus, we are unable to determine whether the university must withhold the social security

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<sup>3</sup>The Public Information Act prohibits the release of confidential information. *Gov't Code* § 552.352. Because release of confidential information constitutes a misdemeanor, the attorney general will raise section 552.101 on behalf of a governmental body, although the attorney general will ordinarily not raise an exception that a governmental body has failed to claim. Open Records Decision No. 455 at 3 (1987).

numbers under section 552.117. If the employees have made such an election, the university may not release the social security numbers for those employees.

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,



Carla Gay Dickson  
Assistant Attorney General  
Open Records Division

CGD/cwt

Ref: ID# 130031

Encl. Submitted documents

cc: Mr. Paul N. Manoli  
61 Edgewood  
Huntsville, Texas 77320  
(w/o enclosures)