



February 11, 2000

Ms. Janice Marie Wilson  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2000-0501

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#132069.

The Texas Department of Transportation (the "department") received a request for "a copy of the child support orders (Administrative writ of withholdings) that are currently being withheld from [an employee's] earnings." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 excepts from disclosure information considered confidential under the common law right to privacy. Information is protected by the common law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Section 552.101 also incorporates the constitutional right to privacy. The United States Constitution protects two kinds of individual privacy interests. The first interest is an individual's interest in independently making certain important personal decisions about matters that the United States Supreme Court has stated are within the "zones of privacy," as described in *Roe v. Wade*, 410 U.S. 113 (1976) and *Paul v. Davis*, 424 U.S. 693 (1976). The "zones of privacy" implicated in the individual's interest in independently making certain kinds of decisions include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. The second individual privacy interest that implicates constitutional privacy involves matters outside the zones of privacy. To determine whether the constitutional right to privacy applies, this office applies a balancing test, weighing the individual's interest in privacy against the public right to know the information. See Open Records Decision No. 455 at 5 (citing *Ramie v. City of Hedwig*

*Village*, 765 F.2d 490, 492 (5<sup>th</sup> Cir. 1985)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” See Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5<sup>th</sup> Cir. 1985)).

After reviewing the submitted information, we find that it does not contain any information that is protected by a right of privacy under section 552.101 of the Government Code. See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, you may not withhold the requested information under section 552.101.

We note, however, that section 552.117 of the Government Code excepts from required public disclosure the home address, telephone number, social security number, or information revealing whether a public employee has family members of a public employee who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the information of an employee who 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 the information of a current or former employee who made the request for confidentiality under section 552.024 after this 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). We believe that the submitted information must be withheld pursuant to section 552.117 if, in fact, an election has been made under section 552.024 of the Government Code.

We also note that even if an election under 552.024 has not been made, a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 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). It is not apparent to us that the social security number contained in the records at issue was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, the department should ensure that the number was not obtained or is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay H. Hastings  
Assistant Attorney General  
Open Records Division

KHH/KSK/ljp

Ref: ID#132069

Encl. Submitted documents

cc: Ms. Linda Kindred  
112 Cloverleaf  
San Marcos, Texas 78666  
(w/o enclosures)