



October 6, 2000

Mr. Jerry R. Hoodenpyle  
Rohne Hoodenpyle & Lobert, P.C.  
Attorneys and Counselors at Law  
P.O. Box 13010  
Arlington, Texas 76013

OR2000-3859

Dear Mr. Hoodenpyle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139814.

The Kennedale Independent School District (the "district"), which you represent, received a request for "a computer-compatible listing of all district employees, including their full name, address (if available), date of birth or year of birth, the position they hold, salary, and any other identifying information that may be readily retained in your records." You indicate that the requestor clarified "any other identifying information" to mean the employees' social security numbers. You state that you have already released to the requestor most of the requested information. You assert that the employees' social security numbers are excepted from required disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

First, we address your section 552.117 discussion. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or family member information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the home telephone number or social security number of a current or former employee or official 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).

You state that the district's employees have not yet chosen to deny access to their social security numbers. Because the employees have not elected to deny public access to this information in accordance with the procedures of section 552.024 of the Government Code, the district may not withhold the social security numbers from required public disclosure pursuant to section 552.117. Furthermore, you state that the district has not yet given its employees the opportunity to make their section 552.024 elections. A public employee who wishes to close or open public access to the information may make the election in writing at any time. Gov't Code § 552.024(e).

Next, you assert that federal law prohibits the release of the social security numbers. 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. 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 or 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.*

You inform us that the district maintains employees' social security numbers pursuant to provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 653a(a)(2)(B), (b)(1)(A). Under this federal law, an employer is required to furnish to the Directory of New Hires of the State in which a newly hired employee works, a report that includes the employee's social security number. 42 U.S.C. § 653a(b)(1)(A). You explain that as of October 1, 1998, the district is required by law to obtain and maintain the newly hired employees' social security numbers. Thus, we agree that the district obtained and is maintaining some of its employees' social security numbers pursuant to a law that was enacted after October 1, 1990. Therefore, the district must withhold from disclosure the social security numbers of its employees who were hired since October 1, 1998 under section 552.101 of the Government Code. As for the social security numbers of employees hired prior to October 1, 1998, the district did not obtain and is not maintaining the social security numbers pursuant to the federal law. Therefore, the district may not withhold the social security numbers under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code.

We will address your other arguments for withholding the social security numbers that the district did not obtain under the federal law regarding newly hired employees. You assert that the district possesses the social security numbers pursuant to section 120.1(a)(1) of title 28 of the Texas Administrative Code, which is effective on January 11, 1991. Section 120.1(a)(1) provides that an employer shall maintain a record of an employee's reported injuries, and the record must include the employee's social security number. You have not explained whether the district obtained any or all of the employees' social security numbers pursuant to section 120.1(a)(1). If the district obtained the social security numbers

as a result of the employees' reports of injuries pursuant to section 120.1(a)(1), then the social security numbers are confidential because they were obtained pursuant to a law enacted after October 1990. However, if the district has employees' social security numbers but the district did not obtain them for the employees' reports of injuries pursuant to section 120.1(a)(1), then they are not confidential because you have not shown that they were obtained pursuant to a law enacted on or after October 1, 1990.

Lastly, you cite to a rule of the State Board of Educator Certification (the "board") as a basis for withholding the social security numbers. Section 249.14 of title 19 of the Texas Administrative Code requires a school superintendent to report certain situations involving educators to the board by filing a report that must contain the educator's social security number. 19 T.A.C. § 249.14(d), (e). While the district may have social security numbers in its possession, the district has not sufficiently explained why it obtained the social security numbers. That is, the district has not explained that it obtained the social security numbers in order to file a report with the board as required under section 249.14. Thus, we are unable to conclude that the district obtained or is maintaining the social security numbers pursuant to section 249.14. Accordingly, the social security numbers are not confidential based on section 249.14.

In summary, you must withhold the social security numbers under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code only if they were obtained pursuant to the federal law concerning newly hired employees or section 120.1(a)(1) concerning employees' reports of injuries. Otherwise, the social security numbers must be released because you have not cited to any other laws and we are not aware of any laws that require or permit the district to obtain the social security numbers.

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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/ljp

Ref: ID# 139814

cc: Ms. Dianna Hunt  
Reporter  
Star-Telegram  
400 West Seventh Street  
Fort Worth, Texas 76102