



October 12, 2000

Ms. Doreen L. Wheeler  
Assistant General Counsel  
Office of Consumer Credit Commissioner  
2601 N. Lamar Blvd.  
Austin, Texas 78705

OR2000-3974

Dear Ms. Wheeler:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140571.

The Office of Consumer Credit Commissioner (the "OCCC") received a written request from a former OCCC employee for the contents of his personnel file. You state that much of the requested information has been released to the requestor. *See* Gov't Code §§ 552.023, .102(a) (granting to employee limited right of access to employee's personnel file information beyond that of the public). You contend, however, that the requestor does not have a right of access to portions of his personnel file, which you contend are excepted from public disclosure under sections 552.101, 552.111, and 552.117 of the Government Code.

You contend that some information that the OCCC gathered or created during the employee's background check and performance evaluations is excepted from public disclosure under section 552.111 of the Government Code, which protects advice, opinion, or recommendation intended for use in the policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). *See also City of Garland v. Dallas Morning News*, 43 Tex. Sup. Ct. J. 303 (Jan.13, 2000). In Open Records Decision No. 615 at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An

agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . . [Emphasis in original.]

After reviewing the records at issue, we conclude that the information you seek to withhold under section 552.111 pertains solely to routine personnel matters. As such, the information may not be withheld under section 552.111.

You also contend that the social security number of an individual other than the requestor is excepted from public disclosure under section 552.117 of the Government Code because that other individual may be an employee of a governmental body in another city. In our opinion, the OCCC is required under section 552.117 to protect information pertaining to only its own employees and officials. We note, for example, that the companion provision to section 552.117, section 552.024, provides that an employee of a governmental body may deny public access to certain information "in the custody of the governmental body." Also, the legislature has established no mechanism for a governmental body's apprising itself of whether given individuals were officers or employees of other governmental bodies, or whether such individuals had exercised the option under section 552.024 to prohibit release of section 552.117 information pertaining to themselves. We therefore do not believe it was the legislature's intent to require a governmental body to protect section 552.117 information for individuals who have not been officials or employees of that governmental body. Accordingly, section 552.117 does not protect section 552.117 information pertaining to officials or employees of governmental bodies other than the OCCC. Consequently, the OCCC must release the individual's home address.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Among the documents at issue is the federal W-2 form of an individual other than the requestor. This W-2 form constitutes confidential "tax return information" and as such must be withheld in its entirety pursuant to federal law. *See* 26 U.S.C. § 6103.

You also seek to withhold pursuant to federal law certain individuals' social security numbers. This office concluded in Open Records Decision No. 622 at 3 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code. It is not apparent to this office, however, that the social security numbers contained in the records at issue were obtained or are maintained by the OCCC pursuant to any provision of law enacted on or after October 1, 1990. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I). We caution the OCCC, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the

OCCC should ensure that these numbers were not obtained nor are maintained by the OCCC pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, the OCCC must withhold pursuant to federal law the W-2 form contained in the records at issue. All remaining records must be released to the requestor in their entirety.

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).

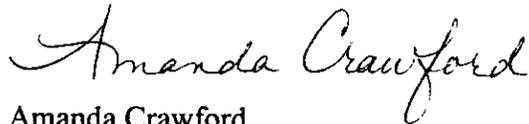
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/RWP/ljp

Ref: ID# 140571

Encl. Submitted documents

cc: Mr. Richard L. Herman  
P.O. Box 9292  
Austin, Texas 78766  
(w/o enclosures)