



October 17, 2000

Mr. Doanh "Zone" T. Nguyen
Staff Attorney
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

OR2000-4034

Dear Mr. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140559.

The Metropolitan Transit Authority ("Metro") received a request for the following information:

- (1) records of all applicants interviewed for a particular position with Metro, including the applicant actually hired;
- (2) the Metro hiring policy and procedure manual;
- (3) names and status of the Metro employees who conducted the interviews; and
- (4) interview questions as well as the points scale and scores for the applicants interviewed.

You claim that the names, addresses, telephone numbers, social security numbers, driver's license numbers, and employment histories and salaries of the job applicants are excepted from public disclosure under section 552.117 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of documents.²

¹Because you have only requested a decision concerning particular information in the job applications, we assume that you have released any information responsive to the remaining requests. *See* Gov't Code §§ 552.301, .302.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Therefore, section 552.117 authorizes Metro only to withhold the home address, home telephone number, social security number, and family member information of the applicant actually employed if that person elected to keep such information confidential under section 552.024 before the request for information was made. Section 552.117 does not except from disclosure the name, driver's license number, employment history, or salary of the person employed. Moreover, section 552.117 does not except from disclosure the information of the other job applicants unless they are currently employed by Metro in another capacity and have elected to have this information kept confidential under section 552.024. Open Records Decision No. 455 at 2 (1987).

You also state that the applicants have a privacy interest in the information you seek to withhold. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception includes information deemed confidential under the right to privacy. However, we have previously held that information regarding a job applicant's name, address, phone number, employment history and salary, and social security number is not protected by common law privacy interests. *See* Open Records Decision Nos. 605 at 2 (1992); 455 at 7, 9 (1987).

We note, though, that 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 records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, 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 pursuant to any provision of law, enacted on or after October 1, 1990.

Likewise, we note that section 552.130 of the Government Code excepts from disclosure information relating to "a motor vehicle operator's or driver's license or permit issued by an agency of this state." Here, the job applications include the driver's license information of the applicants; therefore, to the extent an applicant submitted Texas driver's license information on his or her application, you must withhold this information under section 552.130. We have marked this information on the representative sample.

In summary, Metro is required to withhold information concerning the address, phone number, and social security number of its employee to the extent that person elected to keep the information confidential under section 552.024 of the Government Code. Furthermore, Metro must withhold any social security numbers or related records contained in the applications to the extent they were obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990, and Metro must not disclose any Texas driver's license information submitted by the applicants. However, Metro must disclose the remainder of the requested information.

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 Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 140559

Encl: Submitted documents

cc: Mr. Sam Akinola
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(w/o enclosures)