



June 12, 2002

Mr. Charles D. Olson
Haley & Davis
510 North Valley Mills Drive, Suite 600
Waco, Texas 76710

OR2002-3181

Dear Mr. Olson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164224.

The Heart of Texas Council of Governments (“HOTCOG”), which you represent, received a request for nine categories of information, including information on the members of HOTCOG’s Area Agency on Aging. You indicate that HOTCOG will release some of the responsive information. However, you claim that a portion of the requested information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.117 of the Government Code 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. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, HOTCOG may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You state that the employees at issue have elected to keep their personal information confidential under section 552.024, and you have provided this office with the written forms on which the individuals made their elections. However, the forms only indicate that the employees at issue elected to keep their home addresses and telephone numbers confidential. There is no indication that the employees elected to keep their social security numbers or family member information confidential. Thus, while we agree that HOTCOG must withhold the submitted home addresses and telephone numbers of HOTCOG employees, we do not have sufficient information to determine whether HOTCOG must withhold the employees’ social security numbers. For those employees who

timely elected to keep their social security numbers confidential, HOTCOG must withhold the employees' social security numbers. HOTCOG may not withhold under section 552.117 the social security numbers of those employees who did not make a timely election to keep their numbers confidential.

Even if the employees' social security numbers are not excepted from disclosure under section 552.117, however, they may still be excepted from disclosure under section 552.101 of the Government Code¹ 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 submitted social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 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 HOTCOG pursuant to any provision of law enacted on or after October 1, 1990.

We also note that the submitted information contain Texas driver's license numbers that are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, HOTCOG must withhold the Texas driver's license numbers under section 552.130.

In summary, HOTCOG must withhold the submitted home addresses and telephone numbers of HOTCOG employees under section 552.117 of the Government Code. HOTCOG must also withhold the submitted employee social security numbers under section 552.117 to the extent the employees timely elected to keep their social security numbers confidential. Even

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

if the employees did not timely elect to keep their social security numbers confidential, HOTCOG must withhold the social security numbers if it obtained or maintained the numbers pursuant to a provision of law enacted on or after October 1, 1990. Finally, HOTCOG must withhold the Texas driver's license numbers contained in the submitted information under section 552.130 of the Government Code. HOTCOG must release the remainder of the submitted 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); *Tex. 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 Hadassah Schloss at the Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 "Nathan E. Bowden".

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 164224

Enc: Submitted documents

c: Ms. Carla Swanson
ABC Health Care Agency, Inc.
1300 Victoria Drive
Waco, Texas 76705
(w/o enclosures)