



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

December 17, 2002

Ms. Laura Garza Jimenez
County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2002-7233

Dear Ms. Jimenez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173772.

The Office of the Nueces County Attorney (the "county attorney") and the Office of Nueces County Judge Richard Borchard (the "county judge") received a request for all employment records of former assistant county attorney Terry Shamsie. You state that you have released a majority of the requested information. You claim that some of the remaining requested information, which you have marked, is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note initially that the requestor seeks documents that are records of the judiciary. The Public Information Act does not apply to records of the judiciary. Gov't Code § 552.003(1)(B). Consequently, records maintained by the county judge need not be released under the Public Information Act. Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ); Open Records Decision No. 646 (1996) at 4 ("[t]he function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Public Information Act."). As records of the judiciary, however, the information may be public by other sources of law. Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); *see Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are

generally considered public and must be released). Accordingly, we need not consider your arguments as they apply to any records maintained by the county judge.

We now address your argument that some of the requested information is excepted from release under section 552.101 in conjunction with common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common-law right to privacy. Information is protected under the common-law right to privacy when (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Additionally, this office has held that information regarding an employee's optional insurance coverage, dependent information, and designation of life insurance beneficiary is excepted by common-law privacy. Open Records Decision No. 600 (1992). Accordingly, you must withhold the information we have marked pursuant to section 552.101.

We now consider your arguments that the information you have highlighted is excepted from release under section 552.117(1) of the Government Code. Section 552.117(1) 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. We note that section 552.117(1) also applies to former home addresses and home phone numbers of public employees. 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). You state that the assistant county attorney employee in question timely requested that his personal information remain confidential pursuant to section 552.024, and you have submitted a form demonstrating this election. Upon review of the submitted form, however, we find that the employee in question only requested that his home address and home telephone number be excepted from release under section 552.117. Accordingly, you may not withhold the social security number and family member information that you have highlighted under section 552.117. However, you must withhold all of the home addresses and home phone numbers, which we have marked, of the public employee in question pursuant to section 552.117(1).

You also assert that the submitted information contains information excepted from release pursuant to section 552.130. 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[.]

You must therefore withhold the Texas driver's license number, class, and information regarding restrictions, which we have marked, pursuant to section 552.130. You must withhold the submitted copy of a driver's license that we have marked in its entirety pursuant to section 552.130.

We now address your argument that some of the submitted information is excepted from release under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code. Title 26 section 6103(a) of the United States Code renders tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. 6103(b)(2). This term has been interpreted by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989). Our office has specifically held that W-4 Forms must be withheld in their entirety. Open Records Decision No. 600 at 9 (1992). Therefore, you must withhold the submitted W-4 Form from disclosure in its entirety pursuant to section 552.101.

We further note that section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted Form I-9 in response to this request for information would be "for purposes other than for enforcement" of the referenced federal statutes. A Form I-9 may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, the county attorney must withhold the marked Form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

Finally, we note that the submitted information contains a social security number that may be excepted from release under the federal Social Security Act. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. 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 file 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 the county attorney pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, you must withhold the information we have marked pursuant to section 552.101 in conjunction with common-law privacy. You must withhold all home addresses and home telephone numbers of a public employee that we have marked pursuant to section 552.117(1). You must withhold the Texas driver's license number, class, and information regarding restrictions that we have marked pursuant to section 552.130. You must also withhold the copy of the driver's license that we have marked in its entirety pursuant to section 552.130. You must withhold the submitted W-4 Form in its entirety pursuant to section 552.101 in conjunction with title 26, section 6103(a) of the United States Code. You must withhold the marked Form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. Finally, you may need to withhold the submitted social security number pursuant to section 552.101 in conjunction with the federal Social Security Act. You must release the remaining 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 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 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,



Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 173772

Enc: Submitted documents

c: Mr. J. R. Gonzales
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(w/o enclosures)