



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 21, 2003

Mr. Gordon Bowman
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2003-0414

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175883.

Travis County (the "county") received a request for the complete file of a specified former employee. You state that some information has been released to the requestor but claim that portions of the records you have submitted for our review are 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.¹

Initially, we note that the submitted information includes an Employment Eligibility Verification, Form I-9. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statute. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that an I-9 form and "any information contained in or appended to such form, 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). Release of the I-9 and the appended identification forms in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the marked Form I-9 and appended identification forms are confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

¹We assume that the 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.

We turn now to your arguments. You assert that information you have marked in the submitted documents is protected by common law privacy. Section 552.101 also encompasses the doctrine of common law privacy, which protects information that is (1) intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540S.W.2d 668, 685 (Tex. 1976). We have reviewed the information you have marked and conclude that none of it is excepted under common law privacy, and it may not be withheld on that basis. *See Open Records Decisions Nos. 478 (1987), 455 (1987)* (absent special circumstances, names, addresses, and telephone numbers are not "intimate" information), 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and circumstances of his resignation or termination).

You also assert that the information you have marked is excepted from disclosure under section 552.117. Section 552.117(1) of the Government Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who request that this information be kept confidential under section 552.024. Section 552.117(2) excepts the same information regarding a peace officer regardless of whether the officer made an election under section 552.024 of the Government Code.

We note you have marked the former employee's work telephone number as being excepted under section 552.117. Because such a number is not the employee's current or former "home telephone number," it is not made confidential by section 552.117 and may not be withheld on that basis. *See Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994)* ("The legislative history of section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed *at home*. *See House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985).*" (Emphasis added.)); *see also Open Records Decision Nos. 658 at 4 (1998)* (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

The submitted records indicate that the individual was a peace officer at the time he worked for the county but that he resigned his position with the county. If this individual remained a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure or a security officer commissioned under section 51.212 of the Education Code at the time the county received this request, his home address and telephone number, social security number, and family member information must be withheld under section 552.117(2). If this individual was not a licensed peace officer when this request was received, his home address and telephone number must nevertheless be withheld pursuant to section 552.117(1) because he elected prior to the date of this request to keep such information confidential. *See Open Records Decision No. 530 at 5 (1989)* (whether particular information is protected by predecessor to section 552.117(1) must be determined at time request for it is made). We have marked the information that must be withheld if section 552.117 applies.

Even if the former employee's social security number is not excepted under section 552.117, it may nevertheless be confidential. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), 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* Open Records Decision No. 622 (1994). You inform us that "the social security numbers were apparently not obtained pursuant to any law enacted on or after October 1, 1990." Based on this representation, we have no basis for concluding that any of the social security numbers in the file are excepted from public disclosure on the basis of federal law. You argue, however, that the social security numbers are protected by privacy concerns. However, this office has long held that social security numbers are not the type of intimate and embarrassing information protected under common law privacy. Open Records Decision No. 169 (1977).

Finally, you have highlighted Texas driver's license information. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code 552.130(1). Therefore, under section 552.130, the county must withhold the driver's license information we have marked.

In summary, the marked Form I-9 and appended identification forms are confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system. If the former employee was a licensed peace officer or certified security officer at the time the county received this request, his home address and telephone number, social security number, and family member information must be withheld under section 552.117(2). If the individual was not a licensed officer at the time this request was received, only his home address and telephone number must be withheld under section 552.117(1) in accordance with his election under section 552.024. Regardless of whether section 552.117 applies, the former employee's social security number must be withheld if obtained or maintained pursuant to a law enacted on or after October 1, 1990. Pursuant to section 552.130, the former employee's driver's license number must also be withheld. The remaining submitted information must be released.

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).

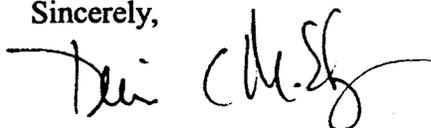
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 175883

Enc. Submitted documents

c: Mr. David Fisher
706 West 11th
Elgin, Texas 78621
(w/o enclosures)