



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 26, 2003

Ms. Allyson Mitchell
Assistant Criminal District Attorney
Anderson County
500 North Church Street
Palestine, Texas 75801

OR2003-2061

Dear Ms. Mitchell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178340.

The Anderson County Auditor's Office (the "auditor") received a request for (1) the payroll list for Precinct 2 and (2) the personnel files of two particular employees. You state that you will make some of the information available to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.110, 552.115, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 protected by other statutes. We note that you assert that an employee's federal and state identification numbers are excepted from disclosure under section 552.101. We note that the identification numbers that you have marked do not appear to belong to an employee, but rather the employer. You have pointed us to no provision of law, nor are we aware of any, that makes the submitted federal and state employer identification numbers confidential. Therefore, you may not withhold these numbers under section 552.101.

You also contend that the submitted documents contain personal financial information that is confidential under section 552.101. Section 552.101 encompasses common-law privacy. Common-law privacy protects information if (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. *Indus. Found. v.*

Tex. Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976). 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. 540 S.W.2d at 683. This office has concluded that financial information concerning an individual is in some instances protected by a common law right to privacy. See Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that "all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 at 3 (1983). You must withhold the personal financial information that we have marked. You must release the remainder of the information that you argue is protected financial information.

We note that you assert that release of some of the submitted information would also be "harmful" to the named employees under section 552.110(b). Section 552.110 protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. See Gov't Code § 552.110(a), (b). You do not assert that these employees are in any way involved in a competitive situation nor do you demonstrate how release would harm them in such a situation. Therefore, you may not withhold any of the submitted information under section 552.110.

Section 552.115 provides that a birth record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from required public disclosure except that "a birth record is public information and available to the public on and after the 50th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official." Since section 552.115 only applies to a birth certificate maintained by the bureau of vital statistics or local registration official, the auditor may not withhold the certificate of birth registration in the personnel file pursuant to that provision. See Open Records Decision No. 338 (1982). This document must be released to the requestor.

We note that some of the submitted information may be confidential under section 552.117 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. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). Although you inform us that the two individuals whose information is at issue did not make an election under section 552.024 of the Government Code to keep their addresses and family member information confidential,

you do not inform us as to whether the individuals made a section 552.024 election with regard to their telephone numbers and social security numbers. Therefore, if the employees complied with section 552.024 with regard to their home telephone numbers and social security numbers, the auditor must withhold this information under section 552.117(1). The auditor may not withhold the employees' home telephone numbers and social security numbers under section 552.117 if they did not make a request for confidentiality under section 552.024 of the Government Code prior to the date on which the request for this information was received.

SWe note that if the social security numbers are not excepted under section 552.117, they 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 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 id.* We have no basis for concluding that any of the social security numbers in the submitted documents 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 auditor pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, we note that you have marked driver's license information that you argue is excepted from disclosure by 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; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license information that you have marked under section 552.130.

In summary, we have marked personal financial information that must be withheld under section 552.101 and common-law privacy. You must withhold the employees' home telephone numbers and social security numbers under section 552.117(1) if they made a

timely election under section 552.024 with regard to this information. The social security numbers may be confidential under federal law. You must withhold the Texas driver's license information that you have marked under section 552.130. You must release the remainder of the information to the requestor.

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).

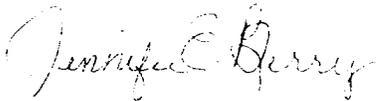
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 178340

Enc: Submitted documents

c: Mr. Gerald Moore
c/o Allyson Mitchell
Anderson County
500 North Church Street
Palestine, Texas 75801
(w/o enclosures)