OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 8, 2003

Srin Surapanani
Staff Attorney
Texas Water Development Board
P. O. Box 13231
Austin, Texas 78711-3231

OR2003-2346

Dear Mr./Ms. Surapanani:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179253.

The Texas Water Development Board (the "board") received a request for travel expense vouchers for a specified period of time pertaining to expenses incurred under "Object Code 2005, Travel, of the Comptroller Expenditure Object Codes." You claim that some of the requested information is excepted from disclosure pursuant to sections 552.024 and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.[1]

You claim that social security numbers that are contained within the responsive information are excepted from disclosure pursuant to 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 timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the official or employee with whom the information is associated did not request confidentiality for the information in accordance with section 552.024 or if the request for confidentiality regarding the information under section 552.024 was not made until after the request for information at issue was received by the governmental body.

[1] 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.

Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that the board must withhold social security numbers that are contained within the responsive information pursuant to section 552.117(1) of the Government Code, if the employees with whom they are associated requested confidentiality for them in accordance with section 552.024 prior to the board's receipt of this request for information.

Nevertheless, such social security numbers may be confidential under federal law and, thus, excepted from disclosure pursuant to section 552.101 of the Government Code.[2] 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). The board has cited no law, nor are we are aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain any social security numbers. Therefore, we have no basis for concluding that any such numbers are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the board, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any such social security numbers, the board should ensure that they were not obtained or are not maintained by the board pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the board must withhold social security number that are contained within the responsive information pursuant to section 552.117(1) of the Government Code, if the employees with whom they are associated requested confidentiality for them in accordance with section 552.024 prior to the board's receipt of this request for information. Nevertheless, such social security number may be confidential under federal law. The board must release the remaining responsive 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

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[2] Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

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).

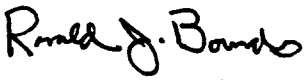
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 179253

Enc. Submitted documents

c: Mr. Mike Price
Deputy Executive Director
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(w/o enclosures)