



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 29, 1994

Mr. Donald G. Vandiver  
First Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR94-293

Dear Mr. Vandiver:

You have asked this office to determine if information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).<sup>1</sup> The City of Lubbock (the "city") has received several requests for various documents concerning payroll information. These requests have been combined into ID# 20830.

The city initially received a request for a microfiche copy of payroll records for particular pay periods. The requestor stated that his request would include "the payroll register as well as the deductions and other exemptions register." The city also received a request for various documents showing payroll procedures and containing information about named employees' retirement benefits.<sup>2</sup> You have not released the payroll

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<sup>1</sup>We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

<sup>2</sup>The city also received various questions submitted in the form of interrogatories, which would have required the city to compile new information. We note that the Open Records Act is not a substitute for the discovery process under the Texas Rules of Civil Procedure. See Attorney General Opinion JM-1048 (1989) at 3 ("the fundamental purposes of the Open Records Act and of civil discovery provisions differ"); Open Records Decision No. 551 (1990) at 3-4 (discussion of relation of Open Records Act to discovery process). The city does not have to compile new information. See Gov't Code § 552.002 (defining a "public record"); *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio, 1978, writ dismissed w.o.j.) (official could not be compelled to produce documents not in his possession); Open Records Decision Nos. 452 (1986) at 2-3; 342 (1982) at 2 (Open Records Act applies only to documents already in existence).

information, as you contend that the social security numbers of employees and information showing various salary deductions are excepted from disclosure. You indicate that you have released the later-requested documents except for the employees' social security numbers and certain salary deductions. You assert that the social security numbers of employees and the salary deductions in question are excepted from disclosure under section 552.101 of the Open Records Act.

You have submitted several documents as samples of the information responsive to these requests. You submitted a payroll register that shows the name of each city employee and codes to identify each type and amount of deduction or withholding for that employee. The "deductions and other exemptions register" shows the name of each city employee and descriptions of salary deductions. Social security numbers of employees are disclosed in these records. You contend that employee social security numbers are excepted under section 552.101. You also contend that the following payroll information is excepted under section 552.101: Federal income tax withholding for private use of city-owned vehicles; savings bond information; child support withholding; Internal Revenue Service and student loan levies; certain life, accident, health and dental insurance information; credit union payments; charitable deductions; savings amounts; direct bank deposit information; and allocation of salary to various types of "flex" plans, which allow an employee to allocate his pretax compensation to certain benefit plans. It is our understanding that the insurance information you contend is confidential involves plans to which the city does not contribute, but rather, are optional plans paid for entirely by employees.

Section 552.101 encompasses a common-law right of privacy, which has been recognized by the Texas Supreme Court. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). This provision protects information which is both highly intimate or embarrassing to a reasonable person and of no legitimate interest to the public. We have recognized that there is a privacy interest in personal financial information. Open Records Decision No. 373 (1983). However, there is a legitimate public interest in financial transactions that involve public funds. Open Records Decision No. 545 (1990). In Open Records Decision No. 600 (1992), this office drew a distinction between benefit plans which are funded in whole or part by the state and financial decisions made by the employee about his own salary. Information about transactions funded in whole or in part by the state is of legitimate public interest. Private financial decisions are not.

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(Footnote continued)

The city also received requests for various other documents. You indicate that you have supplied all of the documents requested except for those which do not exist and the payroll information at issue. You have supplied correspondence which indicates you have informed the requestor certain documents do not exist.

Since we have determined that information showing an employee's option to have his paycheck deposited directly is a private financial decision excepted from disclosure, you must withhold any direct deposit information. Open Records Decision No. 600 at 11-12. The information you have marked as employee participation in various "flex" plans is also excepted from disclosure. *Id.* at 11. Information about an employee's allocation of his salary to voluntary investment programs offered also is private financial information. Therefore you must withhold all of the information you have marked as private investment programs funded entirely by the employee, including deductions for investment funds, savings accounts and savings bonds. *Id.* at 9; see Open Records Decision No. 545 (information about public employees' deferred compensation plan is confidential). Information about employee deductions for insurance coverage paid entirely by the employee is also excepted from disclosure. Open Records Decision No. 600 at 9-10. The only insurance information you seek to withhold is coverage that you indicate is funded entirely by employees. You must withhold information about insurance funded entirely by employees. However, you must release payroll register and code information that shows an employee is receiving insurance funded entirely or partly by the city. *Id.* at 9.<sup>3</sup> We note that the information you submitted shows other deductions funded entirely by the employee, including payments made under a bankruptcy reorganization or repayment program; repayments of federal school loans; payments made for child support; and charitable deductions. As this information appears to be funded entirely by the employee, it is private financial information and excepted from disclosure.

Section 552.101 also exempts from disclosure information made confidential by other law. The information concerning individual employees' income tax withholding for private use of the vehicles and information concerning federal tax levies must be withheld under section 552.101, as it is information made confidential by federal law. 26 U.S.C. § 6103(b)(2)(A); Open Records Decision No. 600 at 8-9.

As to the social security numbers, enclosed is a copy of Open Records Decision No. 622 (1994), which answers your question. This opinion determines that social security numbers must be withheld under federal law if obtained or maintained by a city pursuant to any provision of law enacted on or after October 1, 1990. If not so obtained or maintained, social security numbers may not be withheld from disclosure under section 552.101. Open Records Decision No. 622 at 1-4. It is not apparent to us, nor do we have any way of knowing, that the social security numbers at issue were obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. Therefore, we have no basis on which to conclude that the information at issue is confidential under title 42 of the United States Code, section 405(c)(2)(C)(vii), and therefore excepted from public disclosure under section 552.101 of the Open Records

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<sup>3</sup>The information in question indicates that an employee is receiving insurance coverage and the cost of such, but does not provide detailed information such as might be provided in an insurance enrollment form completed by each employee. In Open Records Decision No. 600 at 9-10, we stated that some of the information in an insurance enrollment form could be confidential.

Act. However, please note that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the city should ensure that the information was not obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/MRC/rho

Ref.: ID# 20830, 23878, 24024, 24043, 24108, 24364, 24454, 24748

Enclosures: Open Records Decision No. 622  
Submitted documents

cc: Mr. Mikel Ward  
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(w/o enclosures)