



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 15, 1994

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 East 11th Street
Austin, Texas 78701-2483

OR94-726

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28212.

The Texas Department of Transportation ("the department") received a request for all documents relative to the investigation of Complaint No. 94-H-T6-C001, and all documents relative to H. B. Zachry. You say the department will release some of the requested information. You assert that some of the requested information is excepted from required public disclosure based on sections 552.101, 552.107(1), and 552.111 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure information made confidential by law. You are concerned about the release of the social security number on the employment records of an employee of H. B. Zachry.

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)(vii). 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.*

You say that the department is "required to maintain social security numbers for a plethora of reasons, many related to laws post-1990, including revisions to the Social Security Act." We note that the social security number at issue is on the employment records of a private company, not the department. Correspondence from Mr. Edwin Sims to Mr. Ed Shaddock indicates that the H. B. Zachry employee was a witness in the discrimination complaint matter.

We have no basis for concluding that this social security number is confidential under section 405(c)(2)(C)(vii), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that it was not obtained or is not maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

The employment record contains a Form W-4 of the Internal Revenue Service. Title 26, section 6103(a) of the United States Code makes tax return information confidential. Tax return information includes information on a Form W-4. See Open Records Decision No. 600 (1992) at 8-9. Consequently, the department must withhold the W-4 form.

You seek to withhold a legal memorandum from you to Mr. Edwin M. Sims through Ms. Daffney A. Henry under section 552.107(1) of the Government Code. This exception states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Section 552.107(1) applies only to information that reveals attorney advice and opinion or client confidences. See Open Records Decision No. 574 (1990). We agree that this memorandum contains primarily legal advice and opinion. Thus, we have marked the portion of the memorandum the department may withhold pursuant to section 552.107(1) of the Government Code. In this instance, only the heading and the closing of the memorandum do not contain legal advice and opinion. Thus, the requestor may obtain these portions of the memorandum, if he wishes.

Finally, you claim section 552.111 excepts from required disclosure a memorandum from Edwin M. Sims through Mr. Ed Shaddock to Ms. Daffney A. Henry. Section 552.111 of the Government Code excepts from required public disclosure:

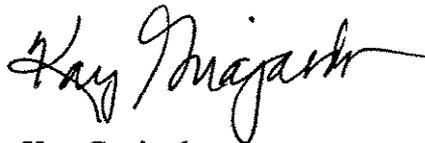
An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.*

We conclude that the memorandum at issue contains advice and opinion pertaining to the policymaking process of the department. Accordingly, we have marked the portions of the memorandum that the department may withhold from disclosure under section 552.111 of the Government Code.

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,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/TCC/rho

Ref.: ID# 28212

Enclosures: Marked documents

cc: Mr. Walter W. Chambers, P.E.
Construction and Maintenance Division
Texas Department of Transportation
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(w/o enclosures)