



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 24, 1995

Ms. Alana Marie Holmes  
Staff Attorney  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR95-668

Dear Ms. Holmes:

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# 30319.

The Texas Natural Resource Conservation Commission ("TNRCC") has received a request for the personnel file of a particular employee, including information concerning purchase of savings bonds through payroll deductions. You have provided some of the information to the requestor and contend that the remaining information is excepted from required public disclosure pursuant to section 552.101 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy as incorporated by section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information ... is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law 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.

540 S.W.2d at 685.

In your supplemental brief to this office, you argue that information retained in the requested personnel file regarding health benefits, beneficiaries, and other benefits related information are considered to be highly intimate facts of no legitimate concern to the public. Nonetheless, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. Open Records Decision No. 545 (1990). For example, information reflecting mandatory Employee Retirement System contributions, state contributions toward employee insurance benefits, and amounts withheld from employee compensation for Social Security Insurance and Medicare are subject to disclosure under the Open Records Act. Open Records Decision No. 600 (1992). However, certain information is protected from disclosure if it relates to employees' personal financial decisions to allocate portions of their compensation to optional benefits which involve no state funding. *Id.* Optional benefits may include participation in TexFlex (an employee benefit plan that allows an employee to choose between cash compensation and one or more tax-exempt fringe benefits); participation in deferred compensation plans--including purchase of saving bonds; and purchase of optional life, accident, dependent life or disability insurance. *Id.* Additionally, information concerning additional persons benefiting from deferred compensation or optional insurance plans, for example, life insurance beneficiaries and co-owners of deferred compensation, is excepted from disclosure. *Id.* We have marked those portions of the documents that you must withhold under section 552.101.<sup>1</sup>

We note that the documents contain the home address and phone number of the affected employee. You must withhold the home address and telephone number of an employee who has requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). Whether a particular piece of information may be withheld under section 552.117 must be determined at the

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<sup>1</sup>We note that the information submitted contains social security numbers. A social security number 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), in certain cases. In relevant part, the 1990 amendments to the federal Social Security Act 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* Open Records Decision No. 622 (1994). We caution, however, that an employer may be required to obtain an employee's social security number under laws that predate October 1, 1990; a social security number obtained under a law that predates October 1, 1990, is not made confidential by the 1990 amendments to the Social Security Act. Based on the information that you have provided, we are unable to determine whether the social security numbers contained in the submitted documents are confidential under federal law. On the other hand, section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing *any* social security number, you should ensure that it was not obtained pursuant to a law enacted on or after October 1, 1990. We note, however, that hiring an individual after October 1, 1990, is not the same as obtaining an individual's social security number pursuant to a law enacted on or after October 1, 1990.

time the request for it is made. Open Records Decision No. 530 (1989) at 5. Therefore, you may not withhold the home address or telephone number of an official or employee who made the request for confidentiality under section 552.024 after this request for the documents was made. We are unable to determine from the information submitted to us whether you have received a request under section 552.024. If notice was not provided prior to this open records request, the information must be released.

In summary, except as noted above, you must release the documents. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/LMM/rho

Ref.: ID# 30319

Enclosures: Marked documents

cc: Mr. Joseph C. Wheatley  
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(w/o enclosures)