



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 21, 1995

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

OR95-966

Dear Mr. Vandiver:

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# 32003.

The City of Lubbock (the "city") received an open records request for information related to the selection of an aviation manager. You state that some of the information requested has been provided to the requestor. You state that, by one part of the request, the requestor seeks information that the city does not maintain in tangible form. You contend that the Open Records Act only requires that governmental bodies make available information they collect, assemble, or maintain. You contend, therefore, that the city is not required to answer a question that requires the creation of new documents or the compilation of information in response to a request. In addition, you contend that, regarding the request for all applications for the position, the applicants' social security numbers and previous non-governmental salaries earned by the applicants are excepted from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. You have submitted for our review representative samples of the information requested.¹

¹In reaching our conclusion here, 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.

Regarding the request for information that you contend the city does not maintain, we note that a governmental body is not required to make available information that does not exist. Open Records Decision No. 362 (1983). While a governmental body must make a good faith effort to relate a request to information that it holds, the Open Records Act applies only to information in existence and does not require a governmental body to prepare new information. Open Records Decision No. 605 (1992). Additionally, we note that the Open Records Act does not require a governmental body to answer factual questions. Open Records Decision No. 555 (1990). Consequently, you need not respond to any portion of the request which would require you to prepare information not already in existence.

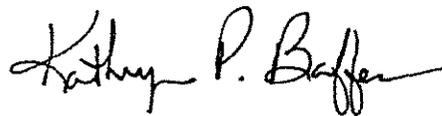
Regarding the request for all of the employment applications for the position of aviation manager, you contend that each applicant's social security number is excepted from required disclosure pursuant to federal statute. Regarding the applicants' social security numbers appearing on applications, we note that federal law may prohibit disclosure of the social security numbers. A social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994); *see also* 42 U.S.C. § 405(c)(2)(C)(v) (governing release of social security number collected in connection with administration of any general public assistance, driver's license or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the city should ensure that the information is not confidential under this federal statute.

You state that many of the applicants have indicated past salaries on their applications and resumes. You contend that this information is part of each applicant's personal financial history which is excepted from required public disclosure. You state that you know of no special circumstances that would indicate any special public interest in the amount of past salaries the applicants received for non-government positions. You contend that while Open Records Decision No. 626 (1994) at 2 cites this office's previous holding that job applicants' previous non-governmental salary information is not the kind of "intimate" information that is protected by disclosural privacy, that the decision ultimately concluded that this type of information must be withheld from required disclosure. Consequently, you seek to withhold this information from required public disclosure.

Certain information regarding applicants for public employment is not the kind of "intimate" information that is protected by disclosural privacy. Open Records Decision No. 455 (1987) at 8-9 (holding that educational training; names and addresses of former employers, dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses, and phone numbers of their character references; their job preferences or abilities; and names of friends or relatives employed by the government are public information). In the portion of Open Records Decision No. 626 (1994) to which you refer, a credit history report that included financial information about the applicant was at issue. We concluded that the credit history report must be withheld from required disclosure. The records at issue are not a credit history report but are the employment sections of the applications for government employment. These records are more in the nature of the records we addressed in Open Records Decision No. 455 (1987) at 8-9. Therefore, you may not withhold the applicants' salaries in their former private sector positions.

We are resolving this matter with this 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 may 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,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/rho

Ref: ID# 32003

Enclosures: Submitted documents

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(w/o enclosures)