



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1995

Mr. Gilbert Kissling
Administrator
Texas State Board of Plumbing Examiners
P.O. Box 4200
Austin, Texas 78704

OR95-1627

Dear Mr. Kissling:

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# 37448.

The Texas State Board of Plumbing Examiners (the "board") has received a request for records relating to a particular investigation your agency conducted. You have submitted responsive records for our review and claim that sections 552.101, 552.103, and 552.108 of the Government Code except the records from required public disclosure.

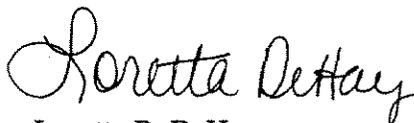
We have reviewed the records submitted for our review. With respect to your claim under section 552.101, you have not cited, nor are we aware of, any statute that would make the information confidential with the possible exception of a social security number. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 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). Based on the information you have provided, we are unable to determine whether the social security number at issue is confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number, the board should ensure that the information is not confidential under this federal statute.

You also claim that one of the documents contains information that may be protected under section 552.101 on the basis of common-law privacy. We have reviewed the document and conclude that the information is not confidential on that basis. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977) (establishing two-pronged test to determine whether particular information is confidential under common-law privacy).

Finally, you contend that sections 552.103 and 552.108 except the requested information from required public disclosure. You have not, however, explained with any degree of specificity how these exceptions apply to the requested information, except to note that the "investigation may be part of a civil or criminal action taken against someone or an entity in the future." Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, or explain how that exception applies, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). We therefore conclude that you have not met your burden under the Open Records Act to establish the extent to which sections 552.103 and 552.108 apply to the requested information. The information is therefore presumed to be public information and must be released to the requestor in its entirety, except as noted above.

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 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 Records Division

LRD/rho

Ref.: ID# 37448

Enclosures: Submitted documents

cc: Mr. K Alan Carlton
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Fort Worth, Texas 76140
(w/o enclosures)