



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 30, 1997

Ms. Robin Abbott
Staff Attorney
Office of the State Auditor
P.O. Box 12067
Austin, Texas 78711-2067

OR97-1246

Dear Ms. Abbott:

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# 106191.

The Office of the State Auditor (the "auditor") received a request for two categories of information relating to State Auditor Report #97-002. In the first category, the requestor seeks "a copy of all receipts, expense reports, travel reimbursement forms, mileage forms, credit card receipts, reimbursement receipts, or any other documents, verifying the expenses incurred for the preparation of" the report. In the second category, the requestor seeks "any and all documents filed with any state agencies for the purposes of documenting or securing reimbursements under Medicaid, Medicare or SSI disability that were used in the preparation of report #97-002." The auditor is providing certain information responsive to the request, but you assert the remaining information is excepted from disclosure pursuant to sections 552.101, 552.116 and 552.117 of the Government Code. We have considered your arguments and have reviewed the information submitted.¹

Section 552.116 of the Government Code excepts from disclosure "[a]n audit working paper of the state auditor." In Open Records Decision No. 580 (1990), this office relied upon standards issued by the American Institute of Certified Public Accountants and the United States General Accounting Office in determining that the term "audit working paper" is a term of art

¹In reaching our conclusion here, we assume that the "representative samples" 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.

used to describe specific types of records. You state that the information responsive to the second part of the request was compiled as audit evidence in the course of preparing SAO Report No. 97-002, and falls within the audit working papers exception. Upon review of the sample information submitted which you state is responsive to this part of the request, we agree these documents are audit working papers and thus, they may be withheld from disclosure based on section 552.116. We have marked this information for your convenience.

We do not, however, believe the documents submitted pertaining to expense reports, reimbursement receipts and mileage forms, which you state are responsive to the first part of the request, are audit working papers for purposes of section 552.116. Thus, they may not be withheld under this section. We will therefore address your arguments under sections 552.101 and 552.117 for excepting information which you have marked in these documents from disclosure.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision and incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In the *Industrial Foundation of the South* decision, the Texas Supreme Court recognized a common-law right-of-privacy in information which is highly intimate or embarrassing to a reasonable person and of no legitimate concern to the public. In Open Records Decision No. 373 (1983) at 3, we stated:

In our opinion, all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common-law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

You do not state whether the credit card numbers contained in the requested information are the private numbers of the cardholding employee or are the property of the auditor for use by the employee. You do state, however, that the requested records "contain some personal information about employees, such as credit card numbers. . . ." Thus, we assume the credit card numbers are the personal property of the cardholder, and on this basis, agree that the credit card numbers at issue are excepted from disclosure under common-law privacy as protected by section 552.101.

With regard to the drivers license numbers you have marked to be withheld under section 552.101, you do not refer to a statute which would make such information confidential, nor are we aware of any such statute. Further, we find that drivers license numbers are not highly intimate and embarrassing and therefore do not meet the first prong of the *Industrial Foundation* test. Thus, the drivers license numbers you marked may not be withheld from disclosure under section 552.101.

Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires you to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 at the time this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.²

Finally, you seek to withhold the names of certain facilities that were referred to in the audit working papers used in preparing SAO Report No. 97-002, but which are contained in the expense reports and travel vouchers submitted as responsive to the first part of the request. Although you have marked this information to be withheld under section 552.101, you do not explain how this exception applies to this information. However, you argue that “the (identities of the facilities were) requested only in the context of the particular audit report. While some of the information requested might be available in another context or from another entity, we think that the 552.116 exception should apply where the purpose of the request is to circumvent the exception and obtain information that is not available as an audit working paper.”

In support of your argument, you note that in OR96-2426, this office ruled that documents identifying nursing homes which were noted in SAO Report No. 97-002 were audit working papers and therefore excepted from disclosure under 552.116. In OR96-2426, this office stated,

[y]ou state that the (Texas Department of Human Services) cannot identify the facilities as requested without using the information in the documents that the state auditor considers to be working papers. You further state that *the only documents that identify these facilities are the working papers*. The state auditor has submitted documentation to this office in which the auditor claims that the records at issue are audit working papers. We agree that records at issue are excepted from disclosure under section 552.116.

(Emphasis added). We believe the facts in the instant case are distinguishable from those in OR96-2426. There, the names of the facilities could only be derived from audit working papers which are confidential pursuant to section 552.116. Here, while the names of the facilities are

²A social security number is excepted from required public disclosure under section 552.101 of the act 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). We note that the federal statute provides that the *law* requiring the maintenance of the employee’s social security number must have been enacted on or after October 1, 1990. 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 Open Records Act imposes criminal penalties for the release of confidential information.

contained in documents which are state auditor working papers, they're also contained in documents which are not. *See* Open Records Decision No. 580 (1990). Thus, we conclude the names of the facilities you have marked in the information submitted which is responsive to the first part of the request may not be withheld under sections 552.101 or 552.116.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 106191

Enclosures: Marked documents

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