



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 6, 1998

Ms. Elizabeth Lutton
Senior Attorney
City of Arlington
Mail Stop 03-0100
501 West Main Street
Arlington, Texas 76010

OR98-0375

Dear Ms. Lutton:

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# 113533.

The City of Arlington (the "city") received a request for ten items of information held by the city's Human Resources Department. You state that you will release most of the requested records. You claim that items 3, 4, and 8 of the requested information are excepted from disclosure under sections 552.024 and 552.101 of the Government Code. You have submitted a representative sample of the requested information for our review.¹

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Information may be withheld under section 552.101 in conjunction with common-law privacy (1) if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person, and (2) if the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert.*

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.

denied, 430 U.S. 931 (1977). Financial information concerning an individual is in some cases protected by common-law privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). This office has previously determined that information revealing the designation of beneficiaries of insurance and retirement funds is confidential under the right of privacy. Open Records Decision No. 600 (1992) at 10. *Id.* In addition, information relating to the employee's choice of carrier and his election of optional coverages is excepted from disclosure. *Id.* However, information revealing that an employee participates in a group insurance plan funded by the governmental body or has enrolled persons in addition to himself is not excepted from disclosure under common-law privacy. *Id.*

Consequently, the beneficiary, choice of carrier, and election of optional coverage information contained in the documents submitted as Exhibits B and C is excepted from required public disclosure under section 552.101. Similarly, we believe that information revealing an employee's decision to contribute to organizations such as the United Way is protected by common-law privacy. *See id.* We therefore agree that the type of information submitted for our review as Exhibit D is protected from disclosure under section 552.101.

Sections 552.024 and 552.117(1) provide that a current or former public employee or official can opt to keep private his or her home address, home telephone number, social security number, and information which reveals that the individual has family members. You must withhold this information wherever it appears in the information at issue if, as of the time of the request for the information, the employee or former employee had elected to keep this information private. *See* Open Records Decision No. 530 (1989) (employee must make election prior to receipt of open records request).

Moreover, social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. 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)(viii)(I). *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.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), 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 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the commission pursuant to any provision of law, enacted on or after October 1, 1990.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/ glg

Ref: ID# 113533

Enclosures: Submitted documents

cc: Mr. Todd Comitini
Staff Representative
Texas Public Workers Association
400 S. Collins Street, Suite 102
Arlington, Texas 76010
(w/o enclosures)