



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 14, 1998

Mr. John B. Dahill
Assistant District Attorney
Dallas County
411 Elm Street
Dallas, Texas 75202

OR98-0945

Dear Mr. Dahill:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114917.

Dallas County (the "county") received a request for information concerning a former employee of the Dallas County District Attorney's Office. You assert that portions of the information are excepted from required public disclosure based on section 552.102 of the Government Code. We assume that the county has or will release the balance of the requested information.

Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Section 552.101, which excepts from disclosure information that is confidential by law, incorporates the common-law right to privacy. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

We have reviewed the information. We agree that records regarding personal investment decisions and beneficiaries of retirement and life insurance proceeds are private and protected from disclosure based on section 552.101 in conjunction with the common law right to privacy. Open Records Decision No. 600 (1992). We also agree that the county must not release the tax information as it is deemed confidential by statute. 26 U.S.C. § 6103(b)(2)(A), Gov't Code § 552.101; *see* Open Records Decision No. 600 (1992) at 8-9. In addition, the employee's social security number and home address and phone number are excepted from disclosure by section 552.117 of the Government Code assuming the employee has elected to keep such information confidential. *See* Gov't Code § 552.024.

Additionally, 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 county pursuant to any provision of law, enacted on or after October 1, 1990. We have marked the documents accordingly.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 114917

Enclosures: Marked documents

cc: Mr. Patrick L. Woodson
P.O. Box 650218
Austin, Texas 78765
(w/o enclosures)