



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1998

Mr. William M. Buechler
Buechler & Associates
1307 West Avenue
Austin, Texas 78701-1736

OR98-1342

Dear Mr. Buechler:

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# 116050.

The Crowley Independent School District (the "district"), which you represent, received a request for the following information relating to the district's school bus drivers: 1) full name, 2) driver's license number, 3) birthdate, and 4) social security number. You contend that the last three requested items are excepted from public disclosure by sections 552.101, 552.102, 552.115, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You assert that the social security numbers are protected by section 552.117. Section 552.117 excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, or personal family member's information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official 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 of a current or former employee who made the request for confidentiality under section 552.024 after this request for information 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. Moreover, federal law may prohibit disclosure of the social security number. A social security number is excepted from required

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.

public disclosure under section 552.101 of the Open Records 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).

Next, you assert that section 552.130 excepts the school bus drivers' license numbers from public disclosure. Section 552.130 of the Open Records Act governs the release and use of information obtained from motor vehicle records. Section 552.130 provides as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

The Seventy-fifth Legislature added chapter 730 to the Transportation Code.² The stated purpose of chapter 730 of the Transportation Code is "to implement 18 U.S.C. Chapter 123 and to protect the interest of an individual in the individual's personal privacy by prohibiting the disclosure and use of personal information contained in motor vehicle records, except as authorized by the individual or by law." Transp. Code § 730.002. Section 730.004 prohibits the disclosure of personal information about any person obtained by an agency in connection with a motor vehicle record.

In this instance, we believe that the district is an "agency," as defined by section 730.003(1) of the Transportation Code, that compiles or maintains motor vehicle records. *See* Transp. Code § 730.003(4) (defining "motor vehicle record"). In its definition of "motor vehicle record," section 730.003(4) of the Transportation Code, however, expressly excludes records that pertain to a motor carrier. The term "motor carrier" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a road or highway in this state. Transp. Code § 643.001. We believe that under these circumstances, persons who drive school buses for the district are "motor carriers," and thus are outside the ambit of section 552.130. *See* Gov't Code § 552.130(b). Therefore, we conclude that the district may not

²Act of May 29, 1997, H.B. 1069, 75th Leg., R.S.

Lastly, you contend that the birthdates are excepted from public disclosure by sections 552.115 and 552.117 of the Government Code as well as common-law privacy as encompassed by section 552.102. A school bus driver's date of birth is not "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health;" therefore, the birthdates are not excepted from public disclosure by section 552.115. In addition, a date of birth is not information covered by section 552.117. Hence, you may not withhold the birthdates based on section 552.117. Finally, you claim that the birthdates are protected by common-law privacy.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code.³ *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy excepts from disclosure private facts about an individual. *Id.* Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. We conclude that the birthdates are not excepted from public disclosure by common-law privacy. Open Records Decision No. 455 (1987). Thus, you must release the birthdates.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 116050

³Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Enclosures: Submitted documents

cc: Ms. Becky Conley
8247 Santa Clara
Dallas, Texas 75218
(w/o enclosures)