



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 29, 1998

Ms. Yolanda Giner  
Assistant City Attorney  
The City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR98-1791

Dear Ms. Giner:

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# 116943.

The City of El Paso (the "city") received a request for "all payroll reports on any Garick Electrical and Mechanical, Inc., jobs that are currently under construction primarily the airport. The last 8 months would be sufficient." You assert that the names, addresses, social security numbers, gender and salary information for each of the Garick Electrical and Mechanical, Inc. ("Garick") employees are excepted from required public disclosure based on section 552.101 of the Government Code in conjunction with the common-law right to privacy.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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 id.*

The employees' names, addresses, social security numbers and gender are not highly intimate or embarrassing information. *See* Open Records Decision Nos. 478 (1987), 455

(1987). An individual's salary may be protected from disclosure based on the common-law right to privacy. *See* Open Records Decision No. 373 (1983). However, the public has a legitimate interest in knowing the salary of individuals employed by a governmental body. We assume that Garick is a contractor employed by the city. Thus, release of the salaries of Garick employees involved in a city project does not implicate the common-law privacy of those employees.

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.*

You ask whether the city must release the social security numbers when it has no knowledge of how the information was obtained or maintained. You state that the city should not be required to release any social security numbers that are in the city's possession for which the city cannot determine the basis for their maintenance. 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. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.<sup>1</sup>

Finally, we observe that the submitted information contains other information that is protected from disclosure based on section 552.101. Federal tax return information is confidential by statutory law. 26 U.S.C. § 6103; *see* Open Records Decision No. 600 (1992). Additionally, information about voluntary employee payroll deductions and child support payments are protected from public disclosure based on the common-law right to privacy. *See id.*<sup>2</sup>

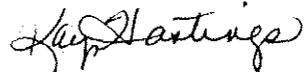
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<sup>1</sup>We note that section 276c of title 40 of the United States Code, which requires contractors and subcontractors in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United State to furnish the Secretary of Labor a weekly statement of the wages paid each employee during the preceding week, was not enacted on or after October 1, 1990.

<sup>2</sup>We caution that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information.

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/mjc

Ref.: ID# 116943

Enclosures: Submitted documents

cc: Mr. Ricardo Santoyo  
International Brotherhood of Electrical Workers  
6967 Commerce  
El Paso, Texas 79915  
(w/o enclosures)