



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 15, 1998

Ms. Tina Plummer  
Open Records Coordinator  
Texas Department of Mental Health  
and Mental Retardation  
P.O. Box 12668  
Austin, Texas 78711-2668

OR98-3142

Dear Ms. Plummer:

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# 120604.

The Texas Department of Mental Health and Mental Retardation (the "department") received an open records request for certain information pertaining to a former department employee. Specifically, the requestor seeks a copy of the employee's insurance plan enrollment form and any change of address forms he may have completed during December 1996.<sup>1</sup> You have submitted to this office as responsive to the request portions of three "Insurance/ TexFlex Multipurpose Forms," which you contend are excepted from public disclosure pursuant to sections 552.101 and 552.117 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. This office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 545 (1990), 523 (1989).

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<sup>1</sup>Although the requestor also seeks the types of plans offered to department employees through Prudential Healthcare at the time of the referenced employee's enrollment, you do not argue that this information is excepted from required public disclosure. We therefore assume the department has made this information available to the requestor.

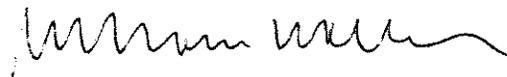
Information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, the fact that an employee participates in a group insurance plan funded by the state is not information that is excepted from disclosure. Open Records Decision No. 600 at 9 (1992). On the other hand, information relating to an employee's choice of insurance carrier and his election of optional coverages is confidential under the right of privacy. *Id.* at 10-11.

Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You inform us that the former employee elected under section 552.024 to keep his home address, home telephone number, social security number, and family member information confidential. Assuming he made the election prior to the date on which the department received the open records request, the department must withhold the employee's home address, home telephone number, social security number, and family member information pursuant to section 552.117.<sup>2</sup>

We have reviewed the documents you submitted to this office and agree that the portions you have marked must be withheld from the public pursuant to sections 552.101 and 552.117(1). The department must release the remaining information contained in these forms.

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,



William Walker  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>A social security number is also excepted from disclosure under section 552.101 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).

WMW/RWP/rho

Ref.: ID# 120604

Enclosures: Submitted documents

cc: Ms. Susan Hoff  
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(w/o enclosures)