



August 18, 1999

Ms. Susan Combs  
Commissioner  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR99-2342

Dear Ms. Combs:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126613.

The Department of Agriculture (the "department") received a request for the personnel records of a named employee. You contend that portions of the responsive information are protected from disclosure pursuant to sections 552.024 and 552.117 of the Government Code. Sections 552.024 and 552.117 provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members. The named employee asked, in writing and prior to receipt of the request for information, that his personal information be kept confidential. We agree that you must withhold the marked information under sections 552.024 and 552.117 of the Government Code.<sup>1</sup> Open Records Decision Nos. 530 at 5 (1989), 482 at 4 (1987), 455 (1987).

We note that other information in the submitted records is confidential under common-law privacy as encompassed by section 552.101 of the Government Code and also under federal law. Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) 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. *Industrial Found. v. Texas Indus. Accident Bd.*,

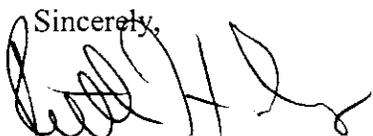
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<sup>1</sup>We note that you indicate the named employee's social security number is private but did not submit a written election request to that effect. We assume, based on your representations, that the named employee signed an election form seeking to withhold his social security number.

540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Financial information in personnel records is generally excepted from public disclosure under the common-law privacy test, except to the extent that the information reflects a transaction between the employee and the public. Open Records Decision Nos. 600 (1992), 545 (1990). Thus, information showing that the state contributes to certain employee benefits is generally public. However, personal financial decisions, including information about a public employee's participation in a deferred compensation plan, premium conversion or TexFlex plans, whether the employee opts to "level" his salary or to direct deposit his salary, and whether the employee opts for continuation coverage of insurance (COBRA), all constitute information that is protected from disclosure on the basis of common-law privacy. *Id.* We have marked this information as confidential.

We have also marked information that must be withheld under federal law. Form W-4, the Employee's Withholding Allowance Certificate, is confidential as tax return information under title 26, section 6103(a) of the United States Code. Open Records Decision No. 600 at 8-9 (1992). The records otherwise must be released.

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.

Sincerely,  


Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 126613

Encl. Submitted documents

cc: Mr. C. L. Fox  
3017 Sesbania  
Austin, Texas 78748  
(w/o enclosures)