



December 20, 1999

Ms. Katherine Minter Cary
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-3678

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130481.

The Office of the Attorney General (the "OAG") received a request for "[a] listing of the names, salaries, job titles, and dates of employment of each attorney hired by the [OAG] on or after January 1st, 1999, [to include] information on all attorneys that have been hired since that date, regardless of whether they still are OAG employees." The requestor also seeks the applications of the referenced newly-hired attorneys. You state that the OAG intends to release to the requestor the matrix of names, salaries, job titles, and dates of employment of each attorney as well as portions of the requested applications. You claim that portions of the employment applications are excepted from disclosure under sections 552.101 and 552.117 of the Government Code.

You raise section 552.117 in regard to the attorneys' social security number, home addresses, and telephone numbers in the applications. Section 552.117 reads in pertinent part as follows:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

Section 552.117 of the Government Code excepts from required public disclosure four categories of information- the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members- of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the information in those categories for any OAG attorney who was hired on a day between January 1, 1999 and the date the OAG

received the request, and who requested that the information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). Generally, 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. Thus, as a general rule, you may not withhold the information of an employee who made the request for confidentiality under section 552.024 after this request for information was made. The exception to this rule occurs in the situation where, at the time the OAG received the request, the newly hired attorney had not stated his choice, but, within the fourteen day period section 552.024 allows a new employee to make his choice, the attorney chose to keep his information confidential. In that situation, the OAG must not release that employee's section 552.117 information.

For those employees, if any, who did not elect to protect from disclosure the section 552.117 information, their social security numbers may be otherwise excepted from disclosure. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. Section 552.101 excepts from disclosure information that is made confidential by law and encompasses statutes that deem information confidential. 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 OAG pursuant to any provision of law, enacted on or after October 1, 1990.

We next address your section 552.101 claim raised in conjunction with 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. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You suggest that the release of the employees' "financial information" will implicate their common-law privacy rights. We assume that the financial information you are concerned about is information about the employees' prior salaries. This office has stated that the public interest in public employees' prior salaries justifies its disclosure, as it bears on the employees' past employment record and their suitability for the employment position in question. *See* Open Records Decision No. 455 at 9 (1987). We therefore find that the employees' prior salaries are not excepted from public disclosure under section 552.101 of the Government Code.

Finally, we note the presence of an employee's driver's license number on an application. The OAG must not release this number to the requestor, as it is excepted from required public disclosure under section 552.130 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/jc

Ref: ID# 130481

Encl. Submitted documents

cc: Ms. Joanne Savage
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(w/o enclosures)