



October 5, 2000

Mr. John B. Dahill
Advisory Chief
Dallas County
411 Elm Street
Dallas, Texas 75202

OR2000-3823

Dear Mr. Dahill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139986.

The Dallas County District Attorney (the "district attorney") received a written request for the personnel file of a former employee. You state that most of the requested information has been released to the requestor. You contend, however, that certain portions of the records at issue are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. You have highlighted the documents, or portions thereof, that you have withheld from the requestor pursuant to the above-cited exceptions.

You acknowledge that you did not request a decision from this office within ten business days of the district attorney's receipt of the records request. Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A demonstration that information is made confidential by law or that the information implicates the privacy interests of an individual constitutes a compelling reason for

withholding the information. *See* Open Records Decision No. 150 (1977). Because each of the exceptions you raise implicates confidentiality provisions or the privacy interests of the former employee, we will consider the applicability of these exceptions to the information you have highlighted.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Among the documents at issue are the employee's W-2 and W-4 tax forms. These forms constitute confidential "tax return information" and as such must be withheld in their entirety pursuant to federal law. *See* 26 U.S.C. § 6103.

Section 552.101 of the Government Code also excepts from public disclosure information made confidential by common law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Some of the records at issue reveal the former employee's designation of beneficiaries. This information reflects a personal financial decision that is protected by common law privacy. *See* Open Records Decision No. 600 at 11 (1992). We agree that the beneficiary information you have highlighted must be withheld from the public on privacy grounds.

You also contend that the fingerprint records of the former employee contained in the submitted documents are excepted from public disclosure under common law privacy. However, we do not consider fingerprints to be the type of information protected by common law privacy. You cite no authority in support of a contention that fingerprints are "highly intimate or embarrassing," nor do we believe this to be the case. Therefore, we conclude that the submitted fingerprints are not excepted from required public disclosure under the doctrine of common law privacy. Because you have raised no other exception to disclosure with regard to this record, we conclude that it must be released.

You next seek to withhold the employee's home address, home telephone number, social security number, and information about family members pursuant to section 552.117 of the Government Code. You have submitted a form that the employee executed pursuant to the statutory predecessor to section 552.024 in which the employee elected to have her home address and home telephone number withheld from the public pursuant to the statutory predecessor to section 552.117. The documents before us, however, contain no indication that the employee elected to have her social security number or information about family members withheld under this section. Accordingly, we conclude that only the employee's home address and telephone number, including former addresses and telephone numbers, come under the protection of section 552.117 of the Government Code.

This office concluded in Open Records Decision No. 622 at 3 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential any social

security number obtained or maintained by any “authorized person” pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code. It is not apparent to this office that the employee’s social security number was obtained or is maintained by the district attorney pursuant to any provision of law enacted on or after October 1, 1990. Therefore, we have no basis for concluding that the employee’s social security number was obtained or is maintained pursuant to such a statute and is therefore confidential under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I). We therefore conclude that the district attorney must release the employee’s social security number, as well as the employee’s family information. We caution the district attorney, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, the district attorney should ensure that this number was not obtained nor is maintained by the district attorney pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, one of the records at issue contains the employee’s driver’s license number. Section 552.130(a)(1) of the Government Code requires the district attorney to withhold “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Accordingly, the district attorney must withhold the driver’s license number pursuant to section 552.130(a)(1).

In summary, the W-2 and W-4 tax forms must be withheld pursuant to federal law. The district attorney must also withhold the employee’s designation of beneficiary information as well as the employee’s home address, telephone number, and driver’s license number. All remaining information you have highlighted must be released.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/RWP/ljp

Ref: ID# 139986

Encl. Submitted documents

cc: Mr. Paul Jordan
P.O. Box 154248
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(w/o enclosures)