



July 26, 2001

Mr. Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
P.O. Box 2286
Austin, Texas 78768-2286

OR2001-3251

Dear Mr. Warren:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149905.

The Texas Commission on Fire Protection (the "commission") received a request for information relating to an individual whom you identify as a firefighter certified through the commission. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that is made confidential by another statute. You claim that the social security card and number of the individual to whom the submitted records pertain are confidential under section 51.251 of the Occupations Code. A note following section 51.251 provides that

[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

You inform this office that the individual to whom the requested records pertain "is the holder of a certificate/license issued by the Commission, to practice in a specific occupation or profession." Based on this representation, we conclude that the individual's social

security number and information that reveals her social security number are confidential under section 51.251 of the Occupations Code. We have marked information in the submitted documents that reveals the individual's social security number. The commission must withhold the individual's social security number and the marked information that reveals her social security number under section 552.101 of the Government Code. We further conclude, however, that section 51.251 of the Occupations Code does not require the commission to withhold the entire social security card.

Section 552.101 also encompasses the common law right to privacy. Common law privacy protects private facts about individuals. Information must be withheld under section 552.101 in conjunction with common law privacy when (1) the information is highly intimate or 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. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); see also Open Records Decision No. 659 at 4-5 (1999) (summarizing types of information that are protected by rights of privacy).

In Open Records Decision No. 373 (1983), this office stated that

all financial information relating to an individual — including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history — ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Id. at 3. In that same decision, we also concluded that the determination of whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on a case-by-case basis. *Id.* at 4. Thus, prior decisions of this office have determined that although financial information relating only to an individual ordinarily satisfies the first element of the common law privacy test, the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See, e.g., Open Records Decision Nos. 600 at 9-12 (1992) (TexFlex benefits), 545 at 3-5 (1990) (deferred compensation plan), 523 at 3-4 (1989) (contents of loan files of veterans participating in Veterans Land Board programs), 373 at 3-4 (1983) (contents of housing rehabilitation grant application files). In this instance, you assert that responsive "negotiable instruments used to pay for licensing fees" contain information that is protected by common law privacy. Upon careful review of the information in question, we conclude that it is not excepted from disclosure under section 552.101.

We note, however, that the Seventy-seventh Legislature recently added section 552.136 to chapter 552 of the Government Code.¹ This newly enacted exception to public disclosure makes certain account numbers confidential. Senate Bill 694 was passed on May 14, 2001, became effective when it was signed by the Governor on May 26, 2001, and provides in relevant part:

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.136). We have marked the information that the commission must withhold under section 552.136 of the Government Code.

You also raise section 552.130 of the Government Code, which provides that "[i]nformation is excepted from [required public disclosure] if the information relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). The commission must withhold the copy of the Texas driver's license and the Texas driver's license number that appear in the submitted documents under section 552.130.

¹The Legislature also enacted two other bills that add a section 552.136 to chapter 552. One is House Bill 2589, which makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The other is Senate Bill 15, which makes information maintained by family violence shelter centers confidential. *See* Act of May 14, 2001, 77th Leg., R.S., S.B. 15, § 1 (to be codified at Gov't Code § 552.136). In addition, Senate Bill 694 enacted the same language from House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Government Code.

In summary, the individual's social security number and the marked information that reveals her social security number are confidential under section 51.251 of the Occupations Code and must be withheld from the requestor under section 552.101 of the Government Code. The commission must withhold the account numbers that appear in some of the submitted documents under section 552.136 of the Government Code. The individual's Texas driver's license and Texas driver's license number must be withheld under section 552.130. The remaining information 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).

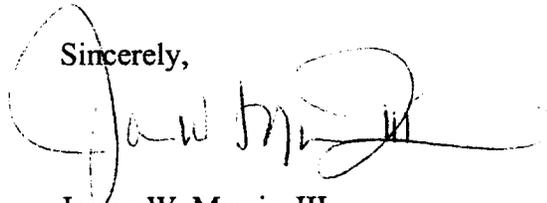
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 149905

Enc: Marked documents

c: Ms. Gail Atwater
3003 Drapers Cove
Lago Vista, Texas 78645
(w/o enclosures)