



July 2, 2002

Ms. Janice Mullenix
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2002-3579

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165188.

The Texas Department of Transportation (“TxDOT”) received a request for all applications submitted for a specified job posting, the screening criteria, and the score forms for each applicant. You advise that TxDOT will release most of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample of information.¹

Section 552.117(1) 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). Thus, to the extent current or former employees whose personal information is at issue elected under section 552.024, prior to the request, to keep

¹We assume that the “sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

this information confidential, you must withhold it under section 552.117(1) of the Government Code. You may not withhold this information under section 552.117 for employees who have not made timely elections under section 552.024. We agree that most of the personal information you have marked must be withheld under section 552.117 for those employees who made timely elections. However, some of this information, which we have marked, is not protected under section 552.117 and must be released. For those applicants who are not TxDOT employees, section 552.117 does not apply.

We note that social security numbers that are not otherwise excepted from disclosure under section 552.117 might nevertheless 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.* You inform us that TxDOT maintains employees' social security numbers pursuant to provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 653a(a)(2)(B), (b)(1)(A). Under this federal law, an employer is required to furnish to the Directory of New Hires of the State in which a newly hired employee works, a report that includes the employee's social security number. 42 U.S.C. § 653a(b)(1)(A). Thus, we agree that TxDOT obtained and is maintaining some of its employees' social security numbers pursuant to a law that was enacted after October 1, 1990. You must withhold from disclosure the social security numbers of TxDOT employees whose numbers were collected pursuant to this law. For employees who were hired before this law was enacted, social security numbers were not obtained or maintained pursuant to the law and therefore, those numbers may not be withheld under section 552.101 and the federal law.

Further, section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Thus, we agree that you must withhold the driver's license number and type of driver's license that you have marked under section 552.130.

Finally, you claim that some e-mail addresses must be withheld. Section 552.137 makes certain e-mail addresses confidential.² Section 552.137 provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act]." *See* Gov't Code § 552.137(a). Unless the individuals to whom the e-mail addresses belong have consented to their release, we agree that you must withhold personal, non-governmental e-mail addresses from the requested applications. *See* Gov't Code

²House Bill 2589, which also makes certain e-mail addresses confidential, took effect on September 1, 2001. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

§ 552.137(b) (confidential information described by this section that relates to member of the public may be disclosed if member of public affirmatively consents to its release). However, the e-mail address contained in the submitted information appears to be a TxDOT e-mail address rather than a personal address. Therefore, it may not be withheld pursuant to section 552.137 and must be released.

In summary, you must withhold the personal information you have marked pursuant to section 552.117, with the exception of the information we have marked for release. Social security numbers must also be withheld under section 552.117 for current or former employees who have made timely elections under section 552.024. For social security numbers not so excepted, you must withhold this information for employees whose social security numbers were collected pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. You must withhold the driver's license information you have marked pursuant to section 552.130. Personal e-mail addresses must be withheld under section 552.137. The remaining requested 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 165188

Enc. Submitted documents

c: Ms. Sheryl Hood
3414 Duckview Court
Arlington, Texas 76016
(w/o enclosures)