



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 7, 2003

Ms. Paula J. Alexander
General Counsel
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2003-3087

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180692.

The Metropolitan Transit Authority of Harris County (the "authority") received a request for certified payrolls for a subcontractor performing work on a construction project for the authority. You claim that social security numbers contained in the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We first note that the authority has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) provides in part that a governmental body that requests an attorney general decision must submit to this office, not later than the 15th business day after the date of its receipt of the request for information, a copy of the written request for information and either a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date. *See Gov't Code* § 552.301(e)(1)(B)-(C). If the governmental body does not comply with section 552.301 in requesting our decision, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. *See Gov't Code* § 552.302.

In this instance, you have not submitted a copy of the request for information, a signed statement of the date on which the authority received the request, or evidence sufficient to establish the date of receipt. Thus, you have not complied with section 552.301 of the Government Code in requesting this decision. Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. As your claim under section 552.101 can provide a compelling reason for non-disclosure under section 552.302, we will address your arguments.

Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that other statutes make confidential. A social security number may be excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 at 2-4 (1994)*. You state that the social security numbers in question here are contained in records maintained by the authority in accordance with the federal Davis-Bacon Act.¹ Section 5.5 of title 29 of the Code of Federal Regulations pertains to the Davis-Bacon Act and related acts. Section 5.5 provides, among other things, for the maintenance by contractors of payroll records, which must include workers’ social security numbers. *See 29 C.F.R. § 5.5(a)(3)*. We note, however, that section 5.5 was enacted prior to October 1, 1990. *See 48 Fed. Reg. 19540 (to be codified at 29 C.F.R. part 5)*. Thus, section 5.5 is not a law enacted on or after October 1, 1990, that authorizes the authority to obtain or maintain a social security number. You do not inform us, and we are unaware, of any other law pertaining to the Davis-Bacon Act that authorizes the authority to obtain or maintain a social security number. Likewise, you have cited no other law, nor do we know of any other law, enacted on or after October 1, 1990 that authorizes the authority to obtain or maintain a social security number. Therefore, as we have no basis for a finding that the social security numbers contained in the submitted documents were obtained or are maintained pursuant to a law enacted on or after October 1, 1990, we have no reason to conclude that these social security numbers are excepted from public disclosure under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See*

¹Prior to its repeal in 2002 by Pub. L. 107-217, the Davis-Bacon Act was classified to title 40 of the United States Code, section 276a *et seq.* *See notes following 40 U.S.C. § 3141.*

Gov't Code §§ 552.007, .352. Therefore, before releasing these social security numbers, the authority should ensure that they were not obtained and are not maintained pursuant to any provision of law enacted on or after October 1, 1990.

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).

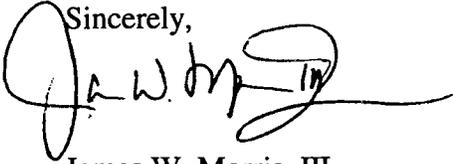
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

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

JWM/sdk

Ref: ID# 180692

Enc: Submitted documents

c: Mr. Douglas S. Broadrick
P.O. Box 61429
Houston, Texas 77208-1429
(w/o enclosures)