



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 2, 2004

Ms. Maleshia Brown Farmer
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2004-1554

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196987.

The City of Fort Worth (the "city") received a request for information relating to the selection process and the chosen candidate for a specified city job posting. You state that the city will release some information but claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that portions of Exhibits C and E, which you have marked, are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(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 timely elect to keep this information confidential pursuant to section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You have provided documentation showing that the employee at issue made an election under section 552.024 prior to the date on which the city received the present request. Therefore, we conclude that the city may withhold the marked information under section 552.117(a)(1).

You also assert that portions of Exhibit C, which you have marked, are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. The city must withhold the marked Texas motor vehicle information under section 552.130.

You also assert that the remaining social security numbers contained in Exhibit E are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that the social security numbers at issue are confidential under the federal Social Security Act. A social security number may be confidential 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), 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 city obtained the social security numbers "through the application process as required by the City's Ordinance Article V Sections 2-178 and 2-179 adopted April 18, 1995." We understand you to assert that this ordinance constitutes a provision of law enacted on or after October 1, 1990, under the Social Security Act. We find, however, that this ordinance is not specifically applicable to a social security number. Furthermore, a city ordinance cannot operate to make information confidential that is subject to chapter 552 of the Government Code. *See* Open Records Decision No. 594 at 3 (1991) (citing *City of Brookside Village v. Comeau*, 633 S.W.2d 790 (Tex. 1982), *cert. denied*, 459 U.S. 1087 (1982)); *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (absent specific legislative authority, governmental body may not bring information within section 552.101 by promulgating rule designating information as confidential). Accordingly, the ordinance does not constitute a provision of law enacted on or after October 1, 1990, for the purpose of section 405(c)(2)(C)(viii)(I). You have cited no other law, nor are we aware of any other law, that authorizes the city to obtain or maintain social security numbers. It therefore is not apparent to this office that the city obtained or maintains the social security numbers at issue here pursuant to any provision of law enacted on or after October 1, 1990. Thus, we have no basis for concluding that these social security numbers were obtained or are maintained pursuant to such a law and are therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing these social security numbers, the city should ensure that they were not obtained and are not maintained pursuant to any provision of law enacted on or after October 1, 1990. However, because the laws regarding the confidentiality of social security numbers are intended to protect individuals' privacy, the requestor's social security number may not be withheld from him on the basis of the federal law. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

In summary, the city must withhold the marked portions of Exhibits C and E under sections 552.117 and 552.130. The city may be required to withhold the remaining social security numbers in Exhibit E under section 552.101 in conjunction with federal law. The remaining information must be released to the requestor.

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 cursive script, appearing to read "Amy Peterson".

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 196987

Enc. Submitted documents

c: Mr. Reginald L. Self
1315 Paula Lane
Mesquite, Texas 75149
(w/o enclosures)