



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2006

Ms. Moira Schilke
Assistant District Attorney
Dallas County District Attorney's Office
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2006-05577

Dear Ms. Schilke:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 253841.

Dallas County (the "county") received a request for information relating to all county employees, including their dates of birth. You claim that county employees' birth dates 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 assume that the county has released any other information that is responsive to this request, to the extent that such information existed when the county received the request.¹ If not, then the county must release any such information immediately. See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

We note that the Texas Comptroller of Public Accounts currently has a lawsuit pending against the Office of the Attorney General that pertains, in part, to public employees' dates of birth: *Tex. Comptroller of Public Accounts v. Abbott*, No. D-1-GN-001120 (126th Dist. Ct., Travis County, Tex.). Accordingly, we do not address your arguments with regard to the

¹We note that the Act does not require the county to release information that did not exist when it received this request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

public employee birth dates that the county seeks to withhold. We will allow the trial court to determine whether that type of information must be released to the public.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

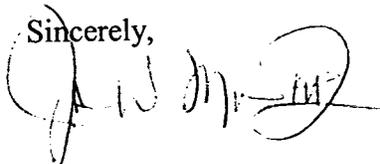
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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" and a long horizontal stroke at the end.

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

JWM/vh2

Ref: ID# 253841

Enc: Submitted documents

c: Mr. Mark Smith
WFAA-TV
606 Young Street
Dallas, Texas 75202
(w/o enclosures)