



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2010

Mr. Robert Ash
Administrator
El Paso City Employees' Pension Fund
2 Civic Center Plaza
El Paso, Texas 79901

OR2010-03911

Dear Mr. Ash:

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# 373305.

The El Paso City Employees' Pension Fund (the "fund") received a request for twelve categories of information pertaining to a deceased retiree and his employment with and retirement from the City of El Paso. You state the fund has provided some of the responsive documents to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.115 and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You raise section 552.115 of the Government Code for the submitted birth certificate. Section 552.115 excepts from disclosure "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]" Gov't Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration officials. *See* Open Records Decision No. 338 (1982) (finding that statutory predecessor to section 552.115 excepted only those birth and death records which are maintained by the bureau of vital statistics and local registration officials). Because section 552.115 does not apply to information held by the fund, the submitted birth certificate may not be withheld on this basis.

Next, you raise section 552.117(a)(1) of the Government Code, which excepts from disclosure the home address and telephone number, social security number, and family

¹ Although you also raise section 552.101 of the Government Code, you do not present any arguments against disclosure under that section. Since you have not submitted arguments concerning section 552.101, we assume that you no longer urge it. *See* Gov't Code §§ 552.301(e), .302.

member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. You raise this section for the deceased employee's personal information that you have marked in the submitted information. Because the protection afforded by section 552.117 includes "current or former" officials or employees, we note that the protection generally does not lapse at death, as it is also intended to protect the privacy of the employee's family members. We note, however, because the protection of social security numbers under section 552.117 is intended solely to protect the privacy of the employee, it lapses at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229; H-917. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989).

You inform us, and provide documentation showing, that the employee at issue timely elected confidentiality for his home address, telephone number, social security number, and family member information under section 552.024. Upon review, we conclude the fund must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the fund may not withhold the deceased employee's social security number under section 552.117. As no further exceptions are raised, the remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

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Enc. Submitted documents

c: Requestor
(w/o enclosures)