



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2011

Mr. Warren M. S. Ernst
Chief of the General Counsel Division
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2011-08703

Dear Mr. Ernst:

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# 421081.

The City of Dallas (the "city") received a request for copies of all election ballot applications submitted by city council and mayoral candidates during March of 2011. You state the city released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note, and you acknowledge, the applications are subject to section 1.012 of the Election Code, which provides in relevant part as follows:

- (a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

...

¹We assume the "representative 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 those records contain substantially different types of information than that submitted to this office.

(c) Except as provided by this code or Chapter 552, Government Code, all election records are public information.

(d) In this code, "election record" includes:

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(3). "An application for a place on [an election] ballot . . . is public information immediately on its filing." *Id.* § 141.035. Therefore, under section 1.012(a), the applications shall be made available to the public, except as provided by the Act. Accordingly, we will address the city's arguments against disclosure of portions of the information in the applications under sections 552.101, 552.102, and 552.117 of the Government Code.

You raise section 552.102(a) of the Government Code in conjunction with the ruling in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010), for the birth dates of current or former city officials in Exhibit B. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). You also raise section 552.101 of the Government Code in conjunction with the ruling in *Texas Comptroller* for the birth dates of current or former city officials in Exhibit B and the birth dates of individuals who have never been employed by the city in Exhibit C. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. In *Texas Comptroller*, the Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller*, 2010WL 4910163, at 10. Accordingly, the dates of birth of private individuals are not excepted from disclosure pursuant to section 552.101 in conjunction with *Texas Comptroller*. Additionally, *Texas Comptroller* applies only to a public employee's birth date maintained by the employer in an employment context. In this instance, you seek to withhold the birth dates of current or former city officials in the submitted ballot applications. Here, the birth dates of current or former employees are held in election records the city is maintaining in accordance with the Election Code, not employment records. Therefore, we conclude the city may not withhold the birth dates under sections 552.101 or 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under

section 552.024 prior to the date of the governmental body's receipt of the request for information. Open Records Decision No. 530 at 5 (1989). However, section 552.117 applies only to records that a governmental body holds in an employment capacity. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in hands of their employer); *see also id.* § 552.024 (providing that employees may elect with main personnel officer of employing governmental body); Open Record Decision Nos. 532 (1989) (stating purpose of predecessor statute of section 552.117 is to protect certain information during and after employment relationship), 530 (discussing interplay between sections 552.024 and 552.117), 455 (1987). As noted above, in this instance, the applications are election records the city is maintaining in accordance with the Election Code, not employment records. Thus, the city may not withhold the home addresses and telephone numbers under section 552.117(a)(1) of the Government Code. Consequently, the submitted applications must be released in their entirety.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/bs

Ref: ID# 421081

Enc. Submitted documents

c: Requestor
(w/o enclosures)