



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2011

Ms. Andrea Sheehan
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2011-09185

Dear Ms. Sheehan:

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# 421914.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for all "documents created, generated, provided and filed with [the district] by candidates or their agents for the Board of Trustees Election May 14, 2011." You state that some of the requested information has been made available to the requestor. You claim that some of the submitted information is 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 information.

Initially, we note, and you acknowledge, that the submitted information is 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.

...

(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:

(1) anything distributed or received by government under this code;

...

(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). "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 submitted information shall be made available to the public, except as provided by the Act. Accordingly, we will address the district's arguments against disclosure of portions of the information in the submitted election records under sections 552.101, 552.102, and 552.117 of the Government Code.

You assert the birth dates of current members of the district's Board of Trustees (the "board") and the birth dates of candidates for positions on the board that have never been district officials are confidential under section 552.101 of the Government Code in conjunction with common-law privacy and the ruling in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). You also assert these birth dates are excepted from disclosure under section 552.102(a) of the Government Code in conjunction with the ruling in *Texas Comptroller*.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101. *Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has since expressly disagreed with *Hubert's* interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test under section 552.101. *Tex. Comptroller*, 2010 WL 4910163, at 5. 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*, 2010 WL 4910163, at 10. Accordingly, the dates of birth of private individuals, such as the board candidates who have never been district officials, are not excepted from disclosure pursuant to section 552.101 in conjunction with *Texas Comptroller* or section 552.102(a). 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 district board members in the submitted ballot applications. The submitted information consists of election records the district is maintaining in accordance with the Election Code, not employment records. Therefore, we conclude the district may not withhold the birth dates at issue under sections 552.101 or 552.102(a) of the Government Code.

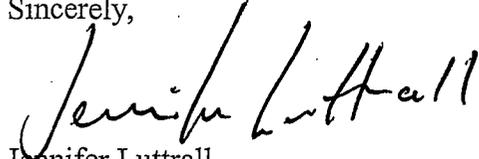
Section 552.117(a)(1) of the Government Code exempts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former official or employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)); Open Records Decision No. 622 (1994). 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* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)) (providing that employees of governmental entities may protect certain personal information in hands of their employer); *see also id.* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 1 (to be codified as an amendment to Gov't Code § 552.024(a)) (providing that employees may elect confidentiality 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 submitted documents are election records the district is maintaining in accordance with the Election Code, not employment records. Thus, the district may not withhold any of the submitted information under section 552.117(a)(1) of the Government Code. Consequently, the submitted information must be released in its 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,

A handwritten signature in black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JLU/dls

Ref: ID# 421914

Enc. Submitted documents

c: Requestor
(w/o enclosures)