



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2011

Ms. Karina Cardoza
Director, Public Affairs Division
Hidalgo County
2818 South Business Highway 281
Edinburg, Texas 78539

OR2011-10055

Dear Ms. Cardoza:

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# 422204.

The County of Hidalgo (the "county") received a request for eight items of information about all county employees. You state the county has released employee names, job titles, departments, years of service, and number of years with the county. You claim some of the submitted information is excepted from disclosure under sections 552.102, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102(a) of the Government Code 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). The Texas Supreme Court recently held that 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 of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the submitted information, we find the county must withhold the dates of birth of county employees under section 552.102(a) of the Government Code.

You also claim portions of the submitted information are excepted from disclosure under sections 552.117 and 552.1175 of the Government Code. Additionally, you indicate you will

withhold the home addresses of certain peace officers under section 552.1175 without requesting a decision from this office. We note, however, that section 552.1175 only applies to personal information of certain categories of individuals who are not employees of the county or to information the county is not holding in an employment capacity. For this reason, section 552.1175 does not apply to any of the requested information. Section 552.117 is the proper exception to raise in this case because the requested information pertains to county employees and the county holds the information in an employment capacity.

Section 552.117 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, emergency contact information, or social security number of the following person or that reveals whether the person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable;

...

(5) a commissioned security officer as defined by Section 1702.002, Occupations Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable; or

(6) an officer or employee of a community supervision and corrections department established under Chapter 76 who performs a duty described by Section 76.004(b), regardless of whether the officer or employee complies with Section 552.024 or 552.1175.

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)). Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. 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). Thus,

information may only be withheld under section 552.117(a)(1) on behalf of a current or former 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 the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential.¹ On the other hand, section 552.117(a)(2), (5), and (6) make information confidential, regardless of whether the covered individual complies with section 552.024 or 552.1175 of the Government Code.²

We note section 552.117 encompasses personal cellular telephone numbers, provided the cellular telephone service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117 exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024). We note a post office box number is not a "home address" for purposes of section 552.117. *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear purpose of section 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

In summary, the county must withhold the dates of birth of its employees under section 552.102(a) of the Government Code. The county must withhold the home address and home telephone number of any peace or security officer covered by section 552.117(a)(2), any commissioned security officer covered by section 552.117(a)(5), and any officer or employee of a community supervision and corrections department covered by section 552.117(a)(6). To the extent the county's other employees timely requested confidentiality under section 552.024, the county must withhold their home addresses and home telephone numbers under section 552.117(a)(1). Any 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.

¹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2).

²We further note the previous determination issued in Open Records Decision No. 670 (2001) authorizes the county to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision.

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,



Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/sdk

Ref: ID# 422204

Enc. Submitted document

c: Requestor
(w/o enclosures)