



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2011

Ms. Sharon Shaw
Administrator
Angelina County & Cities Health District
503 Hill Street
Lufkin, Texas 75904

OR2011-17018

Dear Ms. Shaw:

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# 437602.

The Angelina County & Cities Health District (the "district") received four requests from the same requestor for the sex, salary, title, dates of employment, job application, and resume of four named individuals. The district released some information responsive to the request. As permitted by section 552.024(c)(2) of the Government Code, the district redacted certain information it determined to be subject to section 552.117 of the Government Code without requesting a decision from this office. Pursuant to section 552.024(c-1), the requestor has asked this office to review the redacted information and render a decision as to whether this information is excepted from disclosure under section 552.117. We have considered the district's position and reviewed the redacted information.

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. *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)(1)); Open Records Decision No. 622 (1994). 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)). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made.

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. You have not submitted copies of the employees' election forms. Therefore, if these employees made timely elections under section 552.024, the district must withhold the information we marked under section 552.117(a)(1). If an employee did not make a timely election under section 552.024, then the district may not withhold the information pertaining to that employee under section 552.117(a)(1).¹

Next, we note you have redacted additional information from the records provided to the requestor. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must request a ruling from this office, unless the governmental body is statutorily authorized to withhold the information without asking for a ruling or the information is subject to a previous determination issued by this office. Gov't Code §§ 552.301(a), (e)(1)(D). Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies allowing them to withhold a Texas driver's license number from disclosure under section 552.130 of the Government Code and the e-mail address of a member of the public under section 552.137 of the Government Code without requesting a decision from this office.² Accordingly, we agree the district had the authority to withhold the marked driver's license numbers and e-mail addresses without seeking a decision. You do not assert, however, nor does our review of our records indicate, you have been authorized to withhold the date of birth of an individual or any additional information at issue without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (discussing two types of previous determinations issued by the attorney general). Accordingly, the district was not authorized to withhold any of the remaining information without seeking a ruling from this office.

Some of the remaining information, however, is subject to section 552.102 of the Government Code.³ Section 552.102(a) excepts from disclosure "information in a personnel

¹If the employee did not make a timely confidentiality election under section 552.024, we note section 552.147(b) of the Government Code permits a governmental body to withhold a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

²On September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) exempts 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 information at issue, we find the marked birth dates must be withheld under section 552.102(a) of the Government Code.

In summary, if the employees whose personal information is at issue made timely elections under section 552.024, the district must withhold the information we marked under section 552.117(a)(1). The district must withhold the driver’s license numbers you redacted under section 552.130(c) of the Government Code. The district must also withhold the e-mail addresses you redacted under section 552.137 of the Government Code in Open Records Decision No. 684. The marked dates of birth must be withheld under section 552.102(a) of the Government Code. 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/bs

Ref: ID# 437602

Enc. Submitted documents

c: Requestor
(w/o enclosures)