



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2011

Ms. Dana Colbert
Records Coordinator
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR2011-18553

Dear Ms. Colbert:

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# 439291 (TYC ORR # 17847).

The Texas Youth Commission (the "commission") received a request for the hiring packet and information used to select the two applicants for a specified job posting. You claim a portion of the submitted information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note the commission did not fully comply with section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request." Gov't Code § 552.301(b). You state the commission received the request for information on September 21, 2011. Therefore

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

the ten-business-day deadline was October 5, 2011. Although you state you deposited your request for a ruling in inter-agency mail on October 5, 2011, the request for a ruling from this office was in fact deposited in the United States mail and bears a postmark date of October 7, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, the commission failed to request a decision from this office within the ten-business-day period prescribed by subsection 552.301(b). Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). However, mandatory exceptions to disclosure cannot be waived by a governmental body. *See* Gov't Code § 552.352; Open Records Decision No. 574 at 3 n.4 (2001) (mandatory exceptions). You raise section 552.102 of the Government Code for the submitted information. Further, we note some of the submitted information is subject to sections 552.117 and 552.130 of the Government Code.² Because sections 552.102, 552.117, and 552.130 can provide compelling reasons for non-disclosure, we will address the applicability of these exceptions to the submitted information.

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). The Texas Supreme Court recently 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 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 agree the information you have marked must be withheld under section 552.102(a) of the Government Code.

We note some of the remaining information is subject to section 552.117 of the Government Code. Section 552.117 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 that this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). 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). Therefore, a governmental body must withhold information under section 552.117 on behalf of current or former officials or employees only if these individuals made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employee whose information is at issue timely elected to keep her personal information confidential pursuant to section 552.024, the commission must withhold the information we have marked under section 552.117(a)(1).

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

The commission may not withhold this information under section 552.117 for an employee who did not make a timely election to keep the information confidential.³

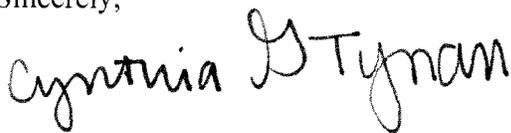
Section 552.130 of the Government Code excepts from disclosure “information [that] relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country[.]” Gov’t Code § 552.130(a)(1). We find the commission must withhold the driver’s license number we have marked under section 552.130 of the Government Code.

In summary, the commission must withhold the information it has marked under section 552.102 of the Government Code, as well as the information we have marked under section 552.130 of the Government Code. To the extent the employee whose information is at issue timely-elected confidentiality under section 552.024, the commission must withhold the information we have marked under section 552.117(a)(1) 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

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³Regardless of the applicability of section 552.117(a)(1) of the Government Code, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147

Ref: ID# 439291

Enc. Submitted documents

c: Requestor
(w/o enclosures)