



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 11, 2012

Ms. Nan Rodriguez  
Deputy City Attorney  
City of Temple  
2 North Main, Suite 308  
Temple, Texas 76501

OR2012-05201

Dear Ms. Rodriguez:

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# 450433.

The City of Temple (the "city") received a request for certain personnel information pertaining to a named employee. You claim that some of the requested information is excepted from disclosure under sections 552.102 and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Section 552.301 of the Government Code describes the obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. Gov't Code § 552.301(b). You state the city received the present request for information on January 18, 2012. Accordingly, the city's ten-business-day deadline was February 1, 2012. However, the envelope in which the city submitted its request for a ruling request bears a postmark of February 3, 2012. *See id.* § 552.308 (describing rules for calculating submission

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<sup>1</sup>Although you raise section 552.024 of the Government Code as an exception to disclosure, we understand you to claim section 552.117 of the Government Code, as this is the proper exception for the substance of your argument.

dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the city failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 at 2 (1977). Because sections 552.102 and 552.117 can provide compelling reasons to withhold information, we will consider these exceptions.

Next, we note that the requestor represents the Child Support Enforcement Division of the New Mexico Human Services Department. Section 231.302 of the Family Code provides in part:

(a) The Title IV-D agency of this or another state may request and obtain information relating to the identity, location, employment, compensation, benefits, income, and property holdings or other assets of any person from a state or local government agency, private company, institution, or other entity as necessary to establish, modify, or enforce a support order.

(b) A government agency, private company, institution, or other entity shall provide the information requested under Subsection (a) directly to the Title IV-D agency, without the requirement of payment of a fee for the information, and shall, subject to safeguards on privacy and information security, provide the information in the most efficient and expeditious manner available, including electronic or automated transfer and interface. Any individual or entity disclosing information under this section in response to a request from a Title IV-D agency may not be held liable in any civil action or proceeding to any person for the disclosure of information under this subsection.

Fam. Code § 231.302(a), (b). A Title IV-D agency is a state agency designated to provide child support services under Part D of Title IV of the federal Social Security Act. *See* 42 U.S.C. §§ 651-669b. In this instance, the requestor is a representative of the Title IV-D agency of the State of New Mexico. *See id.* § 666(c)(1)(D) (requiring procedures that recognize and enforce the authority of Title IV agencies in other States to obtain access to information in records maintained in records of home State agencies); Fam. Code

§ 231.302(a), (b). Upon review, we find that the requested personnel information is encompassed by section 231.302(a) as “information relating to the identity, location, employment, compensation, benefits, income, and property holdings or other assets” of the named employee. *Id.* § 231.302(a). Further, the request letter indicates that the information at issue is being sought to establish, enforce, or modify a child support enforcement order. *Id.* Consequently, we conclude that, pursuant to section 231.302(a) of the Family Code, the requestor has a right of access to the information at issue and, pursuant to section 231.302(b) of the Family Code, the city is required to release this information to the requestor.<sup>2</sup>

You assert, however, some of the requested information is excepted from disclosure under sections 552.102 and 552.117 of the Government Code. 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 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.*, 354 S.W.3d 336 (Tex. 2010). Section 552.117(a)(1) of the Government Code 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 of the Government Code. Gov’t Code § 552.117(a)(1). However, because the requestor in this instance has a statutory right of access to the information at issue, the city may not withhold this information from the requestor pursuant to section 552.102 or section 552.117, which are general exceptions to disclosure under the Act. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act.). Therefore, we conclude that the requestor has a right of access to the requested personnel information pursuant to section 231.302(a) of the Family Code, and the city must release this information to the requestor pursuant to section 231.302(b).<sup>3</sup>

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<sup>2</sup>We note that Open Records Decision No. 448 (1986) determined that the City of El Paso was prohibited from releasing the address of a city employee to the child support bureau of another state pursuant to the statutory predecessor to section 552.117; however, that ruling was issued prior to the enactment of section 231.302 of the Family Code. *See* Act of April 20, 1995, 74th Leg., R.S., ch. 20, §1, 1995 Tex. Gen. Laws 113, 253 (enacting section 231.302).

<sup>3</sup>Because some of the information being released would be excepted from disclosure to the general public, the city must request another ruling from our office if it receives a future request for this information from a person other than this requestor.

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](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, appearing to read 'Sarah Casterline', with a large circular flourish at the end.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/som

Ref: ID# 450433

Enc. Submitted documents

c: Requestor  
(w/o enclosures)