



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2012

Mr. Gary E. Eldridge
Chief Appraiser
Kendall Appraisal District
P.O. Box 788
Boerne, Texas 78006

OR2012-08770

Dear Mr. Eldridge:

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# 455716.

The Kendall Appraisal District (the "district") received a request for employment records of a former employee. We understand you to claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you contend the instant request may not "constitute a public information request[.]" We note, however, a written communication that reasonably can be judged to be a request for public information is a request for public information under the Act. *See generally* Open Records Decision No. 44 at 2 (1974); *see also* Gov't Code § 552.301(a) (governmental body that receives written request for information that it wishes to withhold from public disclosure must ask for decision from this office). Further, this office has determined the Act does not permit the consideration by a governmental body or this office of a requestor's intended use of information when responding to open records requests. Gov't Code § 552.222(a) (stating governmental body may not inquire into purpose for which information will be used); *see also* Open Records Decision Nos. 508 at 2 (1988) (motives of a person seeking

¹Although 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. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See* Gov't Code § 552.024(c).

information under the Act are irrelevant), 51 (1974). In this instance, we find the written communication provided to the district by the requestor on March 19, 2012, can reasonably be judged as a request for public information for the purposes of the Act. Accordingly, we will consider your arguments.

We note the district did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires a governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). As noted above, you inform us the district received the instant request for information on March 19, 2012; therefore, the district's ten-business-day deadline under subsection 552.301(b) was April 2, 2012. You did not, however, request a ruling from this office until April 3, 2012. *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). Accordingly, we find the district has failed to comply with the requirements of section 552.301(b) of the Government Code in seeking a ruling from this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the 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 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public); *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because your claims under sections 552.101, 552.102, and 552.117 of the Government Code can provide compelling reasons for non-disclosure, we will address your arguments under these exceptions.

You generally raise section 552.101 of the Government Code for the submitted information. 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. However, you have not pointed to any law, nor are we aware of any, that would make any of the information at issue confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, none of the submitted information may be withheld under section 552.101 of the Government Code.

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* Gov't Code § 552.117(a)(1). We note the protection afforded by section 552.117 includes "current or former" officials or employees; thus, the protection generally does not lapse at death, as it is also intended to protect the privacy of the employee's family members. However, because the protection of social security numbers under section 552.117 is intended solely to protect the privacy of the employee, it lapses at death. *See Moore v. Charles B. Pierce Film Enters.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."). 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 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 the information. You state the individual at issue requested to keep certain personal information confidential under section 552.024. However, you do not state for what information the individual elected confidentiality. Thus, to the extent the individual at issue elected confidentiality for the information we have marked, it must generally be withheld under section 552.117(a)(1). However, the social security number we have marked must be withheld only if the individual at issue is not deceased. Additionally, we note the requestor submitted an authorization for release. Section 552.023 of the Government Code gives a person or that person's authorized representative a "special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023. To the extent the requestor is acting as the authorized representative of the individual at issue or her estate, if the individual is deceased, then the marked information may not be withheld under section 552.117(a)(1) 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." *Id.* § 552.102(a). The Texas Supreme Court has 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. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. Of Tex.*, 354 S.W.3d 336 (Tex. 2010). Thus, under *Texas Comptroller*, section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by his or her employer in an employment context. Upon review, we find no portion of the submitted information is subject to section 552.102. Accordingly, the district may not withhold any of the submitted information under section 552.102 of the Government Code.

In summary, to the extent the individual at issue elected confidentiality the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code, unless the requestor is acting as the individual's or her estate's, if she is deceased, authorized representative. The social security number we have marked must be withheld only if the individual at issue is not deceased. 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,



Charles Galindo Jr.
Assistant Attorney General
Open Records Division

CG/bs

Ref: ID# 455716

Enc. Submitted documents

c: Requestor
(w/o enclosures)