



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2012

Ms. Donna L. Johnson
For City of Cleveland
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2012-11457

Dear Ms. Johnson:

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# 459754 (Ref. No. COC12-022).

The City of Cleveland (the "city"), which you represent, received a request for specified employment information and citations pertaining to two named individuals and a list of specified bids and permits approved during specified period of time.¹ You state you have released a majority of the requested information to the requestor. You state you will redact social security numbers as permitted by section 552.147 of the Government Code.² You claim portions of the submitted information are excepted from disclosure under

¹You state the city sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

²Section 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. *Id.* § 552.147(b).

sections 552.102, 552.115, 552.117, and 552.130 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 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). Having carefully reviewed the information at issue, we agree the dates of birth you have marked must be withheld under section 552.102(a) of the Government Code. However, the remaining information at issue is not excepted under section 552.102 and, therefore, none of it may be withheld on that basis.

You raise section 552.115 of the Government Code, which excepts from disclosure “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]” Gov’t Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration officials. *See Open Records Decision No. 338 (1982)* (finding that statutory predecessor to section 552.115 excepted only those birth and death records which are maintained by the bureau of vital statistics and local registration officials). We note none of the submitted information consists of a birth or death record maintained by the bureau of vital statistics or a local registration official. Accordingly, section 552.115 of the Government Code is not applicable to any of the remaining information and none of it may be withheld on that basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See Gov’t Code §§ 552.117(a)(1), .024*. We note a post office box number is not a “home address” for purposes of section 552.117.³ 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)*. 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 confidentiality under section 552.024. In this instance, the submitted information includes

³*See Open Records Decision No. 622 at 4 (1994)* (legislative history makes clear purpose of Gov’t Code § 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)) (emphasis added).

election forms in which the employees at issue timely requested confidentiality of their home address and telephone number, social security number, emergency contact information, and information that reveals whether they have family members. Therefore, we conclude the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, none of the remaining information constitutes the home address and telephone number, emergency contact information, social security number, or family member information of a current or former official or employee of the city. Accordingly, none of the remaining information may be withheld under section 552.117(a)(1) of the Government Code.

Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130. Upon review, we find none of the remaining information consists of motor vehicle record information subject to section 552.130. Thus, none of the remaining information may be withheld on that basis.

In summary, the city must withhold the dates of birth it has marked under section 552.102(a) of the Government Code. The city must withhold the personal 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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 459754

Enc. Submitted documents

c: Requestor
(w/o enclosures)