



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 12, 2012

Mr. John J. Carlton  
For Harris County Emergency Services District No. 11  
The Carlton Law Firm, P.L.L.C.  
2705 Bee Cave Road, Suite 110  
Austin, Texas 78746

OR2012-14497

Dear Mr. Carlton:

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# 464786.

The Harris County Emergency Services District No. 11 (the "district"), which you represent, received a request for a named individual's application to be placed on a general election ballot. You state the district has released some of the information. You ask whether the submitted 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.

We note the submitted information is subject to section 1.012 of the Election Code, which provides as follows:

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<sup>1</sup>Although you raise section 552.101 of the Government Code for the birth date in the submitted information, we note section 552.102(a) of the Government Code is the proper exception to raise for your argument. Additionally, although you raise section 552.024 of the Government Code as an exception to disclosure, we note this section is not an exception to disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. See Gov't Code § 552.024. We note section 552.117 of the Government Code is the proper exception to assert.

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

...

(c) Except as otherwise provided by this code or [the Act], all election records are public information.

(d) In this code, "election record" includes:

(1) anything distributed or received by government under this code;

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d). "An application for a place on [an election] ballot . . . is public information immediately on its filing." *Id.* § 141.035. Therefore, under section 1.012(a), the submitted information shall be made available to the public, except as provided by the Act. Accordingly, we will address the district's arguments against 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*, 354 S.W.3d 336. However, we note *Texas Comptroller* applies only to a public employee's birth date maintained by an employer in an employment context. The submitted information consists of an election record the district maintains in accordance with the Election Code, not employment records. Therefore, we conclude the district may not withhold the birth date at issue under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former official or employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1); Open Records Decision No. 622 (1994). Information may be withheld under section 552.117(a)(1) only 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 information. Open Records Decision

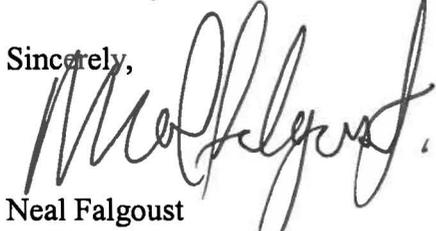
No. 530 at 5 (1989). However, section 552.117 applies only to records that a governmental body holds in an employment capacity. *See* Open Record Decision Nos. 532 (1989) (stating purpose of predecessor statute of section 552.117 is to protect certain information during and after employment relationship), 530 (discussing interplay between sections 552.024 and 552.117), 455 (1987). As previously noted, the submitted document is an election record the district maintains in accordance with the Election Code, not employment records. Thus, the district may not withhold any of the submitted information under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c).<sup>2</sup> Gov’t Code § 552.137(a)–(c). Accordingly, the district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release. As you raise no other exceptions, 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](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,



Neal Falgout  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>The 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).

Ref: ID# 464786

Enc. Submitted documents

c: Requestor  
(w/o enclosures)