



ATTORNEY GENERAL OF TEXAS
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December 3, 2012

Mr. Francisco J. Prado, Jr.
Counsel for the Valley View Independent School District
Attorney at Law
P.O. Box 3489
Edinburg, Texas 78539

OR2012-19372

Dear Mr. Prado:

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# 472835.

The Valley View Independent School District (the "district"), which you represent, received a request for the following categories of information pertaining to certified professional, paraprofessional, and clerical employees employed by the district during a specified time period: (1) first, middle, and last name; (2) date of birth; (3) home address, including city, state, and zip code; (4) home phone number; (5) personal e-mail address and e-mail address assigned by the district; (6) date of hire; (7) work location and grade level; (8) job title; (9) job classification; and (10) type of contract. You state the district has released some of the requested information with the redaction of certain personal information of employees subject to section 552.117 of the Government Code under section 552.024 of the Government Code.¹ You claim some of the remaining requested information is excepted

¹Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117. We note an individual's personal post office box number is not a "home address" for purposes of section 552.117. *See* Open Records Decision No. 622 at 6 (1994) (legislative history makes clear that purpose of section 552.117 is to "protect public employees from being harassed at home" (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)) (emphasis added)). 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 employee or official or former employee or official chooses not to allow public access to the information. *See id* § 552.024(c).

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.²

Initially, we note the requestor only seeks the employees' (1) first, middle, and last names; (2) dates of birth; (3) home addresses, including city, state, and zip code; (4) home phone numbers; (5) personal e-mail addresses and e-mail addresses assigned by the district; (6) dates of hire; (7) work locations and grade levels; (8) job titles; (9) job classifications; and (10) types of contracts. Thus, the submitted information that does not consist of these categories of information is not responsive to the present request. The district need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we must address the district's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). In this instance, you state the district received the request for information on September 14, 2012. Accordingly, the district's fifteen-business-day deadline was October 5, 2012. However, you did not submit the representative sample of the information at issue until November 29, 2012. Consequently, we find the district failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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, 381-82 (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 to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You claim the information you have marked is excepted under section 552.102 of the Government Code. Because section 552.102 can provide a

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

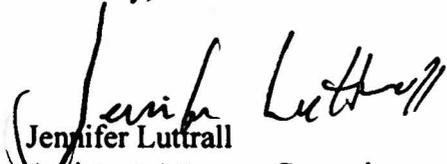
compelling reason to withhold information, we will consider the applicability of this exception to the responsive information.

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, 348 (Tex. 2010). Accordingly, we find the district must withhold the employee dates of birth you have marked under section 552.102(a) of the Government Code.

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,


Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 472835

Enc. Submitted documents

c: Requestor
(w/o enclosures)