



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 8, 2016

Ms. Jennifer Burnett  
Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street, Suite 600  
Austin, Texas 78701

OR2016-15533

Dear Ms. Burnett:

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# 617591 (OGC No. 169307).

The University of Texas Southwestern Medical Center (the "university") received a request for (1) the annual compensation of a named individual, (2) all correspondence and documents between the same named individual and two specified offices from 2011 to the date of the request, and (3) all documents related to the acquisition of the private practice of the same named individual, including a contract involving the university. You state the university has released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.104, and 552.107 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). Upon review, we find the university

must withhold the dates of birth you have marked under section 552.102(a) of the Government Code.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The university states it has specific marketplace interests in the information at issue because the university “regularly [recruits] physicians from existing medial practices” and “[o]ther hospitals, medical care providers[,] and universities are seeking similar opportunities to recruit physicians across a number of medical specialties.” In addition, the university states “if the evaluation criteria and techniques in the submitted documents were disclosed[,] it would be more difficult for the [university] to negotiate appropriate employment arrangements with the physicians of these private practices.” You also state release of the financial and other records pertaining to private medical practices and physicians with which the university negotiates would make private practices reluctant to negotiate with the university, making it difficult for the university to continue expanding through recruiting additional physicians. Further, you assert disclosure of the information at issue would result in the reluctance of private practices and individual physicians to disclose financial information to the university, which would hinder the university’s ability to conduct proper due diligence and craft appropriate compensation packages for these private practice physicians. After review of the information at issue and consideration of the arguments, we find university has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the remaining information under section 552.104(a) of the Government Code.<sup>1</sup>

In summary, the university must withhold the dates of birth you have marked under section 552.102(a) of the Government Code. The university may withhold the remaining information under section 552.104(a) of the Government Code.

You also ask this office to issue a previous determination permitting the university to withhold the dates of birth of current and former employees of the university when the dates of birth are held in an employment context under section 552.102 of the Government Code. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant the university’s request on this matter. Therefore, this letter ruling authorizes the university to withhold the dates of birth of current and former university employees when the dates of birth are held in an employment context under section 552.102 of the Government Code. We note the right to privacy is a personal right

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

that lapses at an individual's death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the university to withhold dates of birth of living current and former employees of the university. This previous determination is not applicable to dates of birth belonging to deceased former employees of the university. We also note a person or a person's authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person's privacy interests. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, this previous determination is not applicable to a date of birth requested by a person or the authorized representative of a person whose date of birth is at issue. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the university need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7-8.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/dls

Ref: ID# 617591

Enc. Submitted documents

c: Requestor  
(w/o enclosures)