



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2009

Ms. Martha T. Williams
Olson & Olson, L.L.P.
Attorney for City of Rosenberg
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2009-09614

Dear Ms. Williams:

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# 348740.

The City of Rosenberg (the "city"), which you represent, received a request for the birth dates of specified current and former government employees. You state you have released some information to the requestor. You claim the remaining requested information is not subject to the Act. In the alternative, you claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered your arguments.¹

Initially, we address your assertion that the information at issue is not subject to the Act. The Act applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, a "governmental body" under the Act "does not include the judiciary." *Id.* § 552.003(1)(B). Information that is "collected, assembled or

¹We note you have not submitted the requested birth dates for our review. Although in this instance we can determine the extent to which this fungible information may be excepted from disclosure, we advise the city in the future to submit for review the information that it seeks to protect from disclosure and for which it seeks a ruling from this office. *See* Gov't Code §§ 552.301, .302.

maintained by . . . the judiciary” is not subject to the Act but is instead “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035). You state the birth dates at issue belong to a judge and officers of the court, and are therefore records of the judiciary. However, you do not inform us, and the information at issue does not indicate, that the city holds the information at issue on behalf of the judiciary. Upon review, we find that the birth dates at issue are maintained by the city for administrative purposes. Therefore, the information at issue is subject to the Act and may only be withheld if it is excepted from disclosure under the Act.

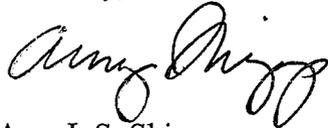
Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision[.]” Gov’t Code § 552.101. This section encompasses information protected by common-law privacy. Section 552.102 of the Government 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we address the city’s section 552.101 and 552.102 privacy claims together.

Although you assert that the employee birth dates at issue should be protected from disclosure, we note that birth dates are not intimate or embarrassing. *Tex. Comptroller of Public Accounts v. Attorney Gen. of Tex.*, 244 S.W.3d 629 (Tex. App.—2008, n.p.h.) (“We hold that date-of-birth information is not confidential[.]”); *see* Attorney General Opinion MW-283 (1980) (public employee’s date of birth not protected under privacy); Open Records Decision No. 455 at 7 (1987) (birth dates, names, and addresses are not protected by privacy). Upon review, we find that you have failed to explain how any portion of the information at issue constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. Thus, we conclude that the information at issue is not protected by common-law privacy, and no portion of the information may be withheld under section 552.101 or 552.102 of the Government Code on this basis. As you raise no further exceptions to disclosure, the information at issue must be released to the requestor.

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 at (512) 475-2497.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 348740

Enc. Submitted documents

cc: Requestor
(w/o enclosures)