



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2009

Ms. Cynthia Villarreal-Reyna
Senior Associate Commissioner
Legal and Compliance Division
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR2009-12182

Dear Ms. Villarreal-Reyna:

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# 353890 (Department of Insurance Request No. 92520).

The Texas Department of Insurance (the "department") received a request for the name, address (if permitted by employee), date of birth (if permitted by employee) and address of employment of all department employees. You state you have released some of the requested information. You claim the submitted dates of birth are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that in her request letter, the requestor states she is seeking the dates of birth of department employees, if release is "permitted by [the] employee." Thus, we understand the requestor to be requesting dates of birth for only those employees who have affirmatively authorized the release of their date of birth. You do not inform us to what extent the submitted dates of birth pertain to employees who have affirmatively authorized their release, or have not so authorized. Thus, we must rule conditionally. If any of the employees whose dates of birth you have submitted did not authorize release of their date of birth, then such dates of birth are not responsive to the request, and need not be released to the requestor. To the extent the submitted dates of birth pertain to employees who did

authorize their release, then they are responsive to the request, and we will address your argument under 552.103 for this information.

Section 552.103 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

Gov't Code § 552.103(a). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). To secure the protection of section 552.103 of the Government Code, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991).

You inform us that the information at issue is the subject of a pending civil appeal. However, we note that the issue before the court in that appeal is whether state employees' dates of birth are protected by a common-law or constitutional right of privacy. Here, as previously noted, the submitted dates of birth are only responsive to the request if the employees to whom the dates of birth pertain have affirmatively authorized their release. Therefore, we find that any responsive dates of birth could not be protected by privacy, as their owners have consented to their release. Thus, we find that any responsive dates of birth are not related to the pending litigation for purposes of section 552.103.

In addition, we note that the department is not a party to the appellate proceeding and therefore does not have a litigation interest in the matter for purposes of section 552.103. Therefore, for these reasons, we conclude the department may not withhold any responsive dates of birth under section 552.103 of the Government Code. As you raise no further exceptions to disclosure, the responsive information must be released.

To summarize, if any of the employees whose dates of birth you have submitted did not authorize release of their date of birth, then such dates of birth are not responsive to the request, and need not be released to the requestor. Any remaining responsive dates of birth 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 at (512) 475-2497.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

Ref: ID# 353890

Enc. Submitted documents

c: Requestor
(w/o enclosures)