



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2011

Ms. Tamara R. Jones
Thompson & Knight, L.L.P.
1722 Routh Street, Suite 1500
Dallas, Texas 75201-2533

OR2011-04127

Dear Ms. Jones:

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# 412242.

The Allen Independent School District (the "district"), which you represent, received a request for a current listing of all district full-time employees and their current campus, home address, home telephone number, school e-mail address, years of service, current annual salary, date of birth, and whether they own a 403(b) plan. You state that, with the exception of the requested home addresses and telephone numbers, dates of birth, and information reflecting 403(b) plan ownership, the district has provided the requested information. You state you have withheld the home addresses and telephone numbers of district employees who properly elected under section 552.024 of the Government Code to have this personal information withheld from disclosure. *See Gov't Code §§ 552.024(c)(2)* (if employee or official or former employee or official elects not to allow public access to his or her personal information, governmental body may redact information without necessity or requesting decision from this office), .117. You also represent that the district provided notice to the requestor pursuant to section 552.024(c-2) of the Government Code. *See id.* § 552.024(c-2) (notice requirements for governmental body that redacts or withholds information under section 552.024(c)(2) of the Government Code). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state the 403(b) plan ownership information in Exhibit B was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-13627 (2010). In that decision, we determined the district must withhold 403(b) plan ownership information under section 552.101 of the Government Code in conjunction with common-law privacy. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the district must continue to rely on that ruling as a previous determination and withhold the 403(b) plan ownership information in Exhibit B in accordance with Open Records Letter No. 2010-13627. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We note, however, the dates of birth of district employees were voluntarily released by the district in response to the previous request for information. Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Thus, pursuant to section 552.007, the district may not now withhold its employees' dates of birth unless release is expressly prohibited by law or the information is confidential by law. You claim section 552.102 of the Government Code, which is a confidentiality provision, for the dates of birth. Thus, we will address your argument under this exception.

Section 552.102(a) 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 recently 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.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Therefore, we agree the dates of birth must be withheld under section 552.102(a) of the Government Code.

In summary, the district must withhold the 403(b) plan ownership information in Exhibit B in accordance with Open Records Letter No. 2010-13627. The district must withhold the dates of birth of district employees in Exhibit C 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 412242

Enc. Submitted documents

c: Requestor
(w/o enclosures)