



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2013

Ms. Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety  
5805 North Lamar Boulevard, Box 4087  
Austin, Texas 78773-0001

OR2013-04495

Dear Ms. Cost:

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# 484545 (DPS PIR# 13-0586).

The Texas Department of Public Safety (the "department") received a request for the requestor's personnel file. You state the department has released some of the requested information but claim some of 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.

Initially, you acknowledge, and we agree, the department did not raise section 552.102 of the Government Code in compliance with section 552.301(b) of the Government Code. Generally, a governmental body's failure to comply with section 552.301 results in the waiver of the claimed exceptions. *See generally id.* § 552.302. However, section 552.102 of the Government Code provides a compelling reason that overcomes the presumption of openness and cannot be waived. Therefore, we will consider whether the submitted information is excepted from disclosure under section 552.102.

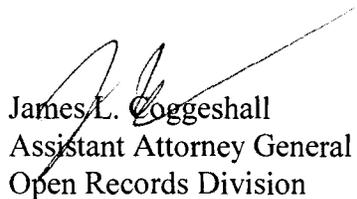
Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of 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). We agree the department must withhold the information you have marked under section 552.102(a) of the Government Code.<sup>1</sup> The department must release the remaining information to the requestor.<sup>2</sup>

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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 484545

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we do not address your other argument to withhold this information.

<sup>2</sup>Because the requestor has a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor. *See* Gov't Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).