



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2014

Mr. O. Charles Buenger
Counsel for the City of Coolidge
Buenger & Associates
3203 Robinson Drive
Waco, Texas 76706

OR2014-12367

Dear Mr. Buenger:

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# 535189.

The City of Coolidge (the "city") received a request for certain ballot applications. The city claims the information at issue is excepted from required disclosure under sections 552.102, 552.117, and 552.137 of the Government Code.¹ The city released the information with certain redactions, some of which were made under section 552.024(c)(2) of the Government Code. *See* Gov't Code §§ 552.024, .117. Since that time, the requestor has asked this office to review the information to determine if the redactions are proper. *See id.* §§ 552.024(c-1). We have considered the arguments and reviewed the information at issue.

We note the requested information is subject to section 1.012 of the Election Code, which provides:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

¹Although the city did not state section 552.137 as an exception, we understand it to make this claim based on the content of its redactions. We note the city failed to comply with the procedural deadlines in asking this office for a ruling to withhold the redacted information. *See* Gov't Code § 552.301. However, sections 552.102, 552.117, and 552.137 can provide compelling reasons for non-disclosure. *See id.* § 552.302. Therefore, we will consider the applicability of these exceptions.

...

(c) Except as otherwise provided by [the Election Code] or [the Act], all election records are public information.

(d) In this code, "election record" includes:

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(3). "An application for a place on [an election] ballot . . . is public information immediately on its filing." *Id.* § 141.035. Therefore, under section 1.012(a), the submitted information shall be made available to the public, except as provided by the Act. Accordingly, we will address the city's arguments against disclosure under sections 552.102, 552.117, and 552.137 of the Government Code.

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*, 354 S.W.3d 336. However, *Texas Comptroller* applies only to a public employee's birth date maintained by an employer in an employment context. The requested information is election records the city maintains in accordance with the Election Code, not employment records. Therefore, we conclude the city may not withhold the dates of birth under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former official or employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1); Open Records Decision No. 622 (1994). Information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Open Records Decision No. 530 at 5 (1989). However, section 552.117 applies only to records that a governmental body holds in an employment capacity. *See* Open Record Decision Nos. 532 (1989) (stating purpose of predecessor statute of section 552.117 is to protect certain information during and after employment relationship), 530 (discussing interplay between sections 552.024 and 552.117), 455 (1987). As previously noted, the requested information consists of election records the city maintains in accordance with the Election Code, not employment records. Thus, the city may not withhold any of the requested information under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c).² Gov’t Code § 552.137(a)–(c). The city must withhold e-mail addresses of the members of the public, unless the owner of the e-mail address affirmatively consents to its release. The remaining information 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.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,



Tamara R. Strain
Assistant Attorney General
Open Records Division

TRS/som

Ref: ID# 535189

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).