



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 14, 2016

Ms. Carol Shaw
Mayor & Public Information Officer
City of Mertzon
P.O. Box 456
Mertzon, Texas 76941

OR2016-08438

Dear Ms. Shaw:

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# 606103.

The City of Mertzon (the "city") received a request for the personnel file of a named former city employee. You claim the submitted information is excepted from disclosure under sections 552.102 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor's attorney. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The city received the request for information on January 14, 2016. You do not inform us the city was closed for any business days between January 14, 2016, and January 28, 2016. Accordingly, you were required to provide the information required by section 552.301(b) by January 28, 2016. However, the envelope in which the city provided the information required by section 552.301(b) was postmarked February 5, 2016. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates

of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. The city claims section 552.103 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.103 of the Government Code. However, sections 552.102, 552.117, 552.130, and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness.¹ Therefore, we will address the applicability of these sections to the submitted information.

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 v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). We note, however, section 552.102 protects personal privacy. In this instance, the requestor is the father of the named former city employee and may be acting as his authorized representative; thus, the requestor may have a right of access to information pertaining to his son that would otherwise be private under section 552.102(a). *See* Gov't Code § 552.023(a) (“person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to 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

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of his son, then the city may not withhold the date of birth we marked from this requestor under section 552.102(a). If the requestor is not acting as the authorized representative of his son, the city must withhold the date of birth we marked under section 552.102(a) of the Government Code. In either case, we find none of the remaining information is subject to section 552.102(a) of the Government Code. Therefore, the city may not withhold the remaining information under section 552.102(a) of the Government Code.

We note some of the remaining information may be subject to section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. However, section 552.117 also protects personal privacy. As noted above, the requestor may be acting as the authorized representative of his son, and thus, have a right of access to his son's private information. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is not acting as the authorized representative of his son and his son timely requested confidentiality pursuant to section 552.024, the city must withhold the information we have marked under section 552.117(a)(1). If the requestor is acting as the authorized representative of his son or his son did not timely request confidentiality pursuant to section 552.024, the city may not withhold the marked information from this requestor under section 552.117(a)(1).

We also note some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. We note section 552.130 also protects personal privacy. As discussed above, the requestor may be the authorized representative of his son, and may have a right of access to information pertaining to him that would otherwise be private under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is acting as the authorized representative of his son, then the city may not withhold the motor vehicle record information we marked under section 552.130. If the requestor is not acting as the authorized representative of his son, the

city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Finally, we note the remaining information contains an e-mail address that is subject to section 552.137 of the Government Code. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). However, as previously noted, the requestor is the father of the individual whose e-mail address is at issue, and may be acting as his son’s authorized representative. Therefore, the requestor may have a right of access to his son’s e-mail address pursuant to section 552.137(b) of the Government Code. *See id.* § 552.137(b). Accordingly, if the requestor is his son’s authorized representative, then he has a right of access to his e-mail address, and that information may not be withheld from this requestor under section 552.137 of the Government Code. If the requestor is not his son’s authorized representative, then the city must withhold the e-mail address we marked under section 552.137 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of his son, the city must withhold (1) the date of birth we marked under section 552.102(a) of the Government Code; (2) the information we marked under section 552.117(a)(1), if his son timely requested confidentiality pursuant to section 552.024; (3) the motor vehicle record information we marked under section 552.130 of the Government Code; and (4) the e-mail address we marked under section 552.137 of the Government Code. The city must release the remaining information.²

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/>

²Regardless of the applicability of section 552.117, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b). We note, however, the requestor may have a right of access to the social security number of his son. *See id.* § 552.023(a); ORD 481 at 4. We also note if the requestor is his son’s authorized representative, then he has a right of access to some of the information being released in this instance. *See id.* § 552.023(a); ORD 481 at 4. Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.

[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,

A handwritten signature in black ink, appearing to read 'Meagan J. Conway', written over a light blue horizontal line.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 606103

Enc. Submitted documents

c: Requestor
(w/o enclosures)