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ATTORNEY GENERAL OF TEXAS

April 18, 2016

Mr. David V. Overcash
Counsel for the City of Anna
Wolfe, Tidwell & McCoy, LLP
2591 Dallas Parkway, Suite 300
Frisco, Texas 75034-8563

OR2016-08592

Dear Mr. Overcash:

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# 606163 (City File No. W000444-012216).

The City of Anna (the "city"), which you represent, received two requests from different requestors for the personnel file of a former employee. You state you are releasing some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed 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."¹ 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). Upon review, we find the city must withhold the date of birth we have marked under section 552.102(a) of the Government Code.²

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, emergency contact information, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, it is unclear whether the former employee whose information is at issue is currently a licensed peace officer as defined by article 2.12. Accordingly, to the extent the former employee is currently a licensed peace officer as defined by article 2.12, the city must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the former employee at issue is not currently a licensed peace officer as defined by article 2.12, the information we marked may not be withheld under section 552.117(a)(2) of the Government Code. However, we find none of the remaining information constitutes the home address or telephone number, emergency contact information, social security number, or family member information of a peace officer under section 552.117(a)(2). Thus, the city may not withhold any portion of the remaining information under section 552.117(a)(2) of the Government Code.

If the former employee is not a currently licensed peace officer, section 552.117(a)(1) of the Government Code may apply to the information at issue. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. 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 only be withheld under section 552.117(a)(1) 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 the information. If the individual made a timely election under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1). If the individual did not make a timely election under section 552.024, this information may not be withheld under section 552.117(a)(1) of the Government Code.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. Gov't Code § 552.147. Upon review, to the extent that the social security number you marked does not belong to a currently licensed peace officer or an individual who made a timely election under section 552.024, we agree the city may withhold the social security number you have marked under section 552.147 of the Government Code.

In summary, the city must withhold the former employee's date of birth under section 552.102(a) of the Government Code. To the extent the former employee is currently a licensed peace officer, the city must withhold the information we marked under

section 552.117(a)(2) of the Government Code. If the former employee is not a currently licensed peace officer, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code only if the former employee timely requested confidentiality under section 552.024 of the Government Code. If the former employee is not a currently licensed peace officer and did not timely request confidentiality, the city may withhold the former employee's social security number under section 552.147 of the Government Code. The city must release the remaining information.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 606163

Enc. Submitted documents

c: Requestor
(w/o enclosures)