



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 25, 2016

Mr. W. Lee Auvenshine
Deputy Superintendent
Human Resources and Legal Services
Waxahachie Independent School District
411 North Gibson Street
Waxahachie, Texas 75165

OR2016-09147

Dear Mr. Auvenshine:

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# 610576.

The Waxahachie Independent School District (the "district") received two requests from different requestors for candidate-filing information pertaining to a specified election. The district states it has provided some of the requested information to the requestors, but claims some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

The district states the submitted information is subject to section 1.012 of the Election Code, which provides as follows:

- (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.

...

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

(d) In this code, “election record” includes:

(1) anything distributed or received by government under this code;

...

(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)(1), (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 must be made available to the public, except as provided by the Act. Accordingly, we will address the district’s arguments against disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen’s date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees’ dates of birth are private under section 552.102 of the Government Code because the employees’ privacy interest substantially outweighed the negligible public interest in disclosure.¹ *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens’ dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. The submitted information includes the date of birth of the first requestor, to which she has a right of access pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Nevertheless, with the exception of the information to

¹Section 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).

which the first requestor has a right of access under section 552.023, the district must withhold all public citizens' dates of birth in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

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). However, section 552.117 applies only to records that a governmental body holds in an employment capacity. *See* Open Record Decision Nos. 532 (1989) (purpose of predecessor to 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 information at issue constitutes election records the district maintains in accordance with the Election Code, not employment records. Thus, the district may not withhold any of the remaining information under section 552.117(a)(1) of the Government Code.

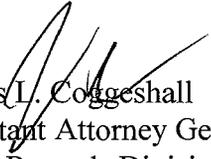
Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. We note some of the information the district seeks to withhold under section 552.137 does not consist of e-mail addresses of members of the public. Therefore, the district may not withhold this information, which we have marked for release, on that ground. Nevertheless, the remaining e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The district does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, with the exception of the information we have marked for release, the district must withhold the e-mail addresses it has marked under section 552.137 of the Government Code.

To conclude, with the exception of the information to which the first requestor has a right of access under section 552.023 of the Government Code, the district must withhold the dates of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the district must withhold the e-mail addresses it has marked under section 552.137 of the Government Code. The district 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 610576

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)