



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 6, 2016

Ms. Jennifer Burnett
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2016-10386

Dear Ms. Burnett:

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# 608856 (OGC# 167871).

The University of Texas Medical Branch at Galveston (the "university") received a request for multiple categories of information related to all individuals employed by the university's Department of Information Services or that relate to specified job codes. You claim some of the submitted information is not subject to the Act. You further claim some of the submitted information is excepted from disclosure under section 552.102 of the Government Code. We have considered the raised arguments and reviewed the submitted information.

Initially, we address your assertion portions of the submitted information are not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002. Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You inform us the submitted identification numbers you have indicated are used by hourly employees to clock-in and clock-out via an electronic timekeeping system, and are tied to employee ID badges within the security system to provide designated employees with access to secure areas. Based on your representations and our review of the information at issue, we agree the identification numbers you have indicated do not constitute "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the university. See Gov't Code § 552.002. Therefore, we conclude the identification numbers you have indicated are not subject to the Act.

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 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). The university must withhold the dates of birth in the remaining information under section 552.102 of the Government Code.

In summary, the identification numbers you have indicated are not subject to the Act and the university need not release them. The university must withhold the dates of birth in the remaining information under section 552.102 of the Government Code.

Finally, the university asks this office to issue a previous determination permitting it to withhold the dates of birth of current and former employees of the university when the dates of birth are held in an employment context under section 552.102 of the Government Code. See Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant the university's request on this matter. Therefore, this letter ruling authorizes the university to withhold the dates of birth of current and former

university employees when the dates of birth are held in an employment context under section 552.102 of the Government Code. We note the right to privacy is a personal right that lapses at an individual's death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the university to withhold dates of birth of living current and former employees of the university. This previous determination is not applicable to dates of birth belonging to deceased former employees of the university. We also note a person or a person's authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person's privacy interests. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, this previous determination is not applicable to a date of birth requested by a person or the authorized representative of a person whose date of birth is at issue. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the university need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7-8 (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

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,

A handwritten signature in black ink, appearing to read 'Joseph Behnke', with a long horizontal line extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 608856

Enc. Submitted documents

c: Requestor
(w/o enclosures)