



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 24, 2016

Mr. Laurence E. Boyd
Counsel for City of Oyster Creek
P.O. Box 269
Angleton, Texas 77516-0269

OR2016-11895

Dear Mr. Boyd:

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# 611662.

The City of Oyster Creek (the "city"), which you represent, received multiple requests from the same requestor for information pertaining to a specified entry in a notary public record. You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). We note the submitted information is responsive to both the first request and the subsequent requests. You state the city received the first request for information on March 1, 2016. Accordingly, the city's ten-business-day deadline with respect to the first request was March 15, 2016. However, the city did not raise sections 552.103, 552.107, and 552.111 of the Government Code for the submitted information until it submitted the second request for a ruling on April 11, 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). Consequently, we find the city failed to comply with section 552.301 of the Government Code in raising sections 552.103, 552.107, and 552.111 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 waiver of the claimed exception. *See id.* § 552.302. The city claims sections 552.103, 552.107, and 552.111 of the Government Code for the submitted information. However, sections 552.103, 552.107, and 552.111 are discretionary in nature and do not make information confidential under the Act. *See 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. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Accordingly, no portion of the submitted information may be withheld under sections 552.103, 552.107, or 552.111 of the Government Code. However, we will consider the city's timely-raised exceptions to disclosure for the submitted information.

Next, you acknowledge the submitted information consists of an entry in a notary public book of an employee of the city. Section 406.014 of the Government Code provides, in part:

(b) Entries in the notary's book are public information.

(c) A notary public shall, on payment of all fees, provide a certified copy of any record in the notary public's office to any person requesting the copy.

Gov't Code § 406.014(b)-(c). Information contained in a notary book is expressly made public by section 406.014 of the Government Code. However, you claim portions of this information are excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.130 of the Government Code, and chapter 730 of the Transportation Code. However, a specific statutory right of access prevails over general exceptions to disclosure in the Act and the common law. *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Because this requestor has a statutory right of access to the information at issue, the city may not withhold any portion of the submitted information section 552.101 of the Government Code in conjunction with common-law privacy. Further, we note that section 552.130 of the Government Code and chapter 730 of the Transportation Code protect privacy interests. Privacy is a purely personal right that lapses at death. *See Moore v. Charles B. Pierce Film Enters, Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F.

Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Thus, section 552.130 of the Government Code and chapter 730 of the Transportation Code do not protect a deceased individual's personal information from disclosure. We note the remaining information the city has marked pertains to a deceased individual. Thus, the city may not withhold any portion of the information at issue under section 552.130 of the Government Code or chapter 730 of the Transportation Code. Accordingly, the submitted 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bw

Ref: ID# 611662

Enc. Submitted documents

cc: Requestor
(w/o enclosures)