



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2016

Ms. Ana Vieira Ayala
Senior Attorney & Public Information Coordinator
The University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2016-18051

Dear Ms. Ayala:

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# 622016 (OGC# 169796).

The University of Texas M.D. Anderson Cancer Center (the "center") received a request for specified information relating to all center employees. You state you have released a majority of the information to the requestor. You state you will redact information pursuant to section 552.147 of the Government Code.¹ You state some of the requested information is not subject to the Act. You also claim some of the submitted information is excepted from

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without requesting a decision from this office under the Act. Gov't Code § 552.147(b).

disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, you contend employee identification numbers are not subject to the Act. The Act is applicable only to “public information.” 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(a). In Open Records Decision No. 581 (1990), this office determined that 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. *See* ORD 581 at 6 (construing predecessor to Act). You assert the employee identification numbers “provide administrative access within the [center’s] computer system but do not consist of log-on information.” We understand the employee identification numbers are part of a two-part log in protocol that could access secure and sensitive employment and student records, as well as the potential

²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

to compromise high level functions. Based on these representations and our review, we agree the employee identification numbers do not constitute public information for the purposes of section 552.002. Thus, the employee identification numbers are not subject to the Act, and the center is not required to release them in response to the request for 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). Accordingly, the center must withhold the information we have marked under section 552.102(a) of the Government Code.

In summary, the employee identification numbers are not subject to the Act and need not be released to the requestor. The university must withhold the dates of birth we have marked under section 552.102(a) of the Government Code. The remaining responsive information must be released.

Finally, the center asks this office to issue a previous determination permitting the center to withhold the dates of birth of current and former employees of the center under section 552.102 of the Government Code when the dates of birth are held in an employment context. *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 center’s request on this matter. Therefore, this letter ruling authorizes the center to withhold the dates of birth of current and former center 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. Civ. 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 center to withhold dates of birth of living current and former employees of the center. This previous determination is not applicable to dates of birth belonging to deceased former employees of the center. 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 center 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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

Ref: ID# 622016

Enc. Submitted documents

c: Requestor
(w/o enclosures)