KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 11, 2016

Ms. Ana Vieira Ayala
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street, Suite 600
Austin, Texas 78701

OR2016-18132

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# 622220 (OGC# 169705).

The University of Texas at Arlington (the "university") received a request for eight categories of information for all full time employees. You state you have released some information to the requestor. You state the university will redact social security numbers pursuant to section 552.147(b) of the Government Code.[1] The university claims some of the submitted information is not subject to the Act. The university also claims some of the submitted information is excepted from disclosure under section 552.102 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.[2]

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

[2]This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

The Act is applicable only to "public information." Gov't Code § 552.021. Section 552.002(a) of the Government Code 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:
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> (1) by a governmental body;
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> (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). Section 552.002(a-l) also provides the following:

> Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

Id. § 552.002(a-l). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The university states the submitted information contains employee identification numbers of university employees. 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. The university indicates the submitted employee identification numbers are unique, computer-generated numbers, created and assigned to university employees at the time they are hired. The university also informs

us that, although these numbers are not used as computer log-on information, they are used to gain access to the university's computer system. Based on these representations and our review, we agree the submitted 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 university 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). Upon review, we find the university must withhold the submitted employee dates of birth under section 552.102(a) of the Government Code.

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

You also ask this office to issue a previous determination permitting the university 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 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 system 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 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/dls

Ref: ID# 622220

Enc. Submitted documents

c: Requestor
(w/o enclosures)