



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 15, 2016

Mr. Dennis J. Eichelbaum
Counsel for the Cleveland Independent School District
Eichelbaum Wardell Hansen Powell & Mehl, P.C.
5801 Tennyson Parkway, Suite 360
Plano, Texas 75024

OR2016-25449

Dear Mr. Eichelbaum:

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# 634290.

The Cleveland Independent School District (the "district"), which you represent, received a request for information pertaining to district employees born prior to a certain date.¹ The district states it released some information. The district claims the remaining responsive information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.² We have considered the exceptions you claim and reviewed the

¹We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We note the district failed to comply with section 552.301 of the Government Code in requesting a ruling; however, sections 552.101 and 552.102 of the Government Code are mandatory exceptions that constitute compelling reasons to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the district's arguments under these sections.

submitted representative sample of information.³ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

The requestor seeks a list of employees who were born prior to a certain date. The district states it does not maintain a list of employees based on age but does maintain its employees' dates of birth. The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983). We note, however, a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. *See* Open Records Decision No. 561 (1990). In this instance, the district has reviewed its records and determined the information at issue is responsive to the instant request. Thus, we find the district has made a good-faith effort to relate the request to information within its possession or control on the date the district received the request. Therefore, we find the names and dates of birth of district employees born prior to the specified date are responsive to the instant request. The remaining information is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request and the district is not required to release such information in response to this request. However, we will determine whether the district must release the responsive information to the requestor under 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.” 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, the district must withhold the responsive dates of birth under section 552.102(a) of the Government Code.⁴ As the district raises no exceptions to disclosure for the remaining responsive information, it 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.

³We 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 that those records contain substantially different types of information than that submitted to this office.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 "Paige Thompson". The signature is written in a cursive style with a large initial "P".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 634290

Enc. Submitted documents

c: Requestor
(w/o enclosures)