



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 3, 2017

Mr. Belvin Harris
City Attorney
City of Gainesville
200 South Rusk
Gainesville, Texas 76240

OR2017-03365A

Dear Mr. Harris

Our office issued Open Records Letter No. 2017-03365 (2017) on February 15, 2017. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on February 15, 2017. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"))).

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# 656350.

The City of Gainesville (the "city") received a request for each full-time employee's name, title/position, primary location, e-mail address, date of birth, date of hire, and salary. You state the city has released some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must address the city's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) written comments stating the reasons

why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The city received the request for information on November 28, 2016. Thus, the city was required to submit a copy of the information at issue in its request for a ruling by December 19, 2016. However, the city did not submit a copy of the information at issue until February 23, 2017. Consequently, we find the city failed to comply with the requirements of section 552.301 in requesting this decision from our office.

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 legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The city claims sections 552.101 and 552.102 of the Government Code for the submitted information. Because sections 552.101 and 552.102 can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these sections for the submitted 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). The city must withhold the dates of birth you marked under section 552.102(a) of the Government Code.¹ The city must release the remaining information.

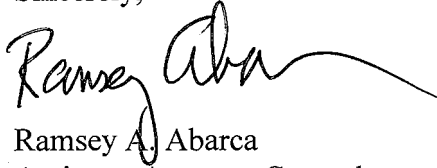
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 "Ramsey Abarca", with a long, sweeping horizontal line extending to the right.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 656350

Enc. Submitted documents

c: Requestor
(w/o enclosures)