June 15, 2017

Mr. Neal Falgoust  
Assistant City Attorney  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-8828

Dear Mr. Falgoust:

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# 662199 (PIR# 31437/33472).

The City of Austin (the "city") received a request for documents related to the employment of named individuals and communications sent or received after a specified date by the named individuals. You state you have released some information. You inform us the city has redacted some information subject to section 552.117(a)(1) of the Government Code pursuant to section 552.024 of the Government Code and motor vehicle record information

1We note you sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. See Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. See id. § 552.263(a). You inform us the city received a portion of the required deposit on March 27, 2017. See id. § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit). In response to the city's cost estimate, the requestor filed a complaint with this office. See id. § 552.2615(b), (f). As our office is examining the pending cost complaint, we will not address the requested information subject to the cost estimate at issue.
under section 552.130(c) of the Government Code. You claim some of the submitted information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of 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 city must withhold the date of birth you marked under section 552.102(a) of the Government Code. The remaining information must be released.

Finally, the city asks this office to issue a previous determination permitting the city to withhold under section 552.102(a) of the Government Code the dates of birth of current and former employees of the city 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 city’s request on this matter. Therefore, this letter ruling authorizes the city to withhold the dates of birth of current and former city employees under section 552.102(a) of the Government Code when the dates of birth are held in an employment context. 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. 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 city to withhold dates of birth of living current and former employees of the city. This previous determination is not applicable to dates of birth belonging to deceased former employees of the city. We also note a person or a person’s authorized representative has a

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2Section 552.024 of the Government Code authorizes a governmental body to redact from public release a current or former official or employee’s home address and telephone number, emergency contact information, social security number, and family member information excepted from disclosure under section 552.117(a)(1) without the necessity of requesting a decision from this office under the Act, if the employee timely elected to withhold such information. See Gov’t Code §§ 552.024(a)-(c), .117(a)(1). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Id. § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See id. § 552.130(d), (e).

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 those records contain substantially different types of information than that submitted to this office.
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 city 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,

Emily Buchanan
Attorney
Open Records Division

EB/eb

Ref: ID# 662199

Enc. Submitted documents

c: Requestor
(w/o enclosures)