



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2017

Mr. William Schultz
Assistant District Attorney
Denton County Criminal District Attorney's Office
1450 East McKinney, Suite 3100
Denton, Texas 76209

OR2017-26481

Dear Mr. Schultz:

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# 684962 (PIR# 17-143).

Denton County (the "county") received three requests from the same requestor for (1) the starting salary, ending salary, and date of separation of a named individual, (2) the starting salary and current salary of a second named individual, and (3) the starting salaries and current salaries of specified employees of the county Health Department. The county claims the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted representative sample of information.

Initially, we note some of the submitted information is not responsive to the instant request because it does not pertain to the requested categories of information or was created after the county received the request for information. This ruling does not address the public availability of the non-responsive information, which we have marked, and the county need not release it in response to the request.

¹Although the county also raises sections 552.101, 552.107, and 552.117 of the Government Code, the county has not provided any arguments to support these exceptions. Therefore, we assume the county has withdrawn its claim these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

Next, we note the county has not submitted information responsive to the request for the date of separation of the named individual. Further, the county does not inform us it has released this information. Although the county states it has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information the county has submitted for our review. This ruling does not authorize the county to withhold any information that is substantially different from the types of information it submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any such information existed on the date the county received the request, we assume the county has released it. If the county has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

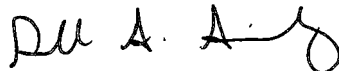
(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(2). The county must release this information pursuant to section 552.022(a), unless it is made confidential under the Act or other law. *See id.* Although the county asserts this information is excepted from disclosure under section 552.103 of the Government Code, this exception is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the county may not withhold the responsive information, which we have marked, under section 552.103. Consequently, the county must release the responsive information we have marked pursuant to section 552.022(a)(2) of the Government Code.

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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 684962

Enc. Submitted documents

c: Requestor
(w/o enclosures)