October 9, 2018

Ms. Christine Bedillo  
Counsel for China Springs Independent School District  
Walsh Gallegos Treviño Russo & Kyle, P.C.  
505 East Huntland Drive, Suite 600  
Austin, Texas 78752

Dear Ms. Bedillo:

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# 731744.

The China Springs Independent School District (the “district”), which you represent, received a request for information pertaining to two specified school board meetings. You state the district will release some information. You also state the district will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t

1Section 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. See Gov’t Code § 552.130(c).

2We 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.
Code § 552.101. This section encompasses information protected by other statutes, such as section 551.104 of the Open Meetings Act, chapter 551 of the Government Code. Section 551.104 provides, in part, "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Id. § 551.104(c). We note the district is not required to submit a certified agenda or tape recording of a closed meeting to this office for review. See Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101). Such information cannot be released to a member of the public in response to an open records request. See Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. See Gov't Code § 551.146(a)-(b); see also ORD 495 at 4. You state the requestor seeks access to audio recordings and certified agendas of the district's closed school board meetings. Based on your representation, we conclude the district must withhold the information you have indicated under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes. As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.182 provides, in relevant part,

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Gov't Code § 418.182(a). The fact that information may relate to a governmental body's security concerns does not make the information per se confidential under the Texas Homeland Security Act. See Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the Texas Homeland Security Act must adequately explain how the responsive records fall within the scope of the claimed provision. See Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).
You assert the information you have indicated relates to various security systems used to protect the district from an act of terrorism or related criminal activity. Based on your representations and our review, we find you have demonstrated the information we have marked relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code. However, we find you have failed to demonstrate the remaining information at issue is confidential under section 418.182. Thus, the district may not withhold the remaining information you have marked under section 552.101 on that basis.

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." Id. § 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 Public Accounts v. Attorney Gen. Of Tex., 354 S.W.3d 336 (Tex. 2010). Thus, under Texas Comptroller, section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by his or her employer in an employment context. Accordingly, the district must withhold the employee's date of birth you have marked under section 552.102(a) of the Government Code.\(^3\)

In summary, the district must withhold the information you have indicated under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code. The district must withhold the employee's date of birth you have marked under section 552.102(a) of the Government Code. The district must release the remaining information.

Finally, the district asks this office to issue a previous determination permitting the district to withhold under section 552.102(a) of the Government Code the dates of birth of current and former employees of the district 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 district's request on this matter. Therefore, this letter ruling authorizes the district to withhold the dates of birth of current and former district 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.—Texarkana 1979, writ ref'd n.r.e.); see also Open Records Decision

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\(^3\)As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.
Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the district to withhold dates of birth of living current and former employees of the district. This previous determination is not applicable to dates of birth belonging to deceased former employees of the district. 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 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 district 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,

Jahnna Ward
Assistant Attorney General
Open Records Division

JW/eb

Ref: ID# 731744

Enc. Submitted documents

c: Requestor
(w/o enclosures)