



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 16, 2019

Ms. Lori J. Robinson
Counsel for the City of Lakeway
Bickerstaff Heath Delgado Acosta, L.L.P.
3711 South MoPac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2019-01341

Dear Ms. Robinson:

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# 753182.

The City of Lakeway (the "city"), which you represent, received a request for information pertaining to a named city employee. The city states it will redact certain motor vehicle record information pursuant to the previous determination issued in Open Records Decision No. 684 (2009).¹ The city claims some of the submitted information is exempted from disclosure under sections 552.102 and 552.117 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

Section 552.102(a) of the Government Code exempts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including Texas license plate numbers under section 552.130(a)(2) of the Government Code, without the necessity of requesting an attorney general decision. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 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). Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684. Therefore, the city may redact information subject to subsection 552.130(a)(2) only in accordance with section 552.130, not Open Records Decision No. 684.

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). Accordingly, the city must withhold the employee’s date of birth within the submitted information under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the city may not withhold the marked information under section 552.117(a)(1).²

In summary, the city must withhold the employee’s date of birth within the submitted information under section 552.102(a) of the Government Code. To the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. 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.

²Regardless of the applicability of section 552.117 of the Government Code, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/mo

Ref: ID# 753182

Enc. Submitted documents

c: Requestor
(w/o enclosures)