



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 16, 2019

Ms. Shea Smith
Assistant City Attorney
City of Sugar Land
2700 Town Center Boulevard North
Sugar Land, Texas 77479-0110

OR2019-10185

Dear Ms. Smith:

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# 759678 (ORR# W006037).

The City of Sugar Land (the "city") received a request for the contact information "for all filed candidates for the Sugar Land City Council May 2019 election." The city claims some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

The city states the submitted information is subject to section 1.012 of the Election Code, which provides as follows:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

...

(c) Except as otherwise provided by this code or [the Act], all election records are public information.

(d) In this code, "election record" includes:

(1) anything distributed or received by government under this code;

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(1), (d)(3). An application for a place on an election ballot "is public information immediately on its filing." *Id.* § 141.035. Therefore, under section 1.012(a), the submitted information must be made available to the public, except as provided by the Act. Accordingly, we will address the city's arguments against disclosure.

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 Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the city must withhold the dates of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). However, section 552.117 applies only to records that a governmental body holds in an employment capacity. *See* Open Record Decision Nos. 532 (1989) (purpose of predecessor statute of section 552.117 is to protect certain information during and after employment relationship), 530 (discussing interplay between sections 552.024 and 552.117), 455 (1987). The requested information consists of election records, not employment records, and the city does not maintain the information in an employment capacity. Thus, the district may not withhold any of the submitted information under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code

§ 552.137(a)-(c). The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The city does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the city must withhold the e-mail addresses it has marked under section 552.137 of the Government Code.

In summary, the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information it has marked under section 552.137 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.

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,


James W. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 759678

Enc. Submitted documents

c: Requestor
(w/o enclosures)