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ATTORNEY GENERAL OF TEXAS

June 18, 2019

Mr. Eric C. Farrar
Counsel for the City of Brookshire
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2019-16452

Dear Mr. Farrar:

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# 771125 (ORR# COB19-010).

The City of Brookshire (the "city"), which you represent, received a request for ballot applications and appointments of campaign treasurer for each candidate in a specified election. The city states it will withhold e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code.² We have considered the exceptions the city claims and reviewed the submitted information.

Initially, we note the submitted information is subject to section 1.012 of the Election Code, which provides, in relevant part, the following:

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

²Although the city cites to section 552.117 of the Government Code for portions of the submitted information, we note section 552.1175 of the Government Code is the proper exception to raise for information the city holds in a law enforcement capacity rather than in an employment capacity.

(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 [the Election Code] or [the Act], all election records are public information.

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

...

(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)(3). In addition, section 141.035 of the Election Code provides, "[a]n 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 city must make the submitted information available to the public, except as provided by the Act. Accordingly, we will address the submitted arguments against disclosure of the submitted 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 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 all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

The city claims some of the remaining information is subject to section 552.1175 of the Government Code. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We also note a post office box number is not a "home address" for purposes of section 552.1175. *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home). The city informs us some of the remaining information relates to individuals who are "current or former" peace officers. However, we note section 552.1175 is applicable only to individuals who are currently licensed as peace officers as defined by Article 2.12, Code of Criminal Procedure. We are unable to determine from the information provided which of the individuals at issue are currently licensed peace officers. Thus, we must rule conditionally. Accordingly, with the exception of the post office box numbers, which are not subject to section 552.1175 and which we have marked for release, to the extent the information the city marked relates to individuals who are currently licensed as peace officers and who elect to restrict access to the information in accordance with section 552.1175(b), the city must withhold the information it marked under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individuals whose information is at issue are not currently licensed as peace officers or do not elect to restrict access to their information in accordance with section 552.1175(b), the information at issue may not be withheld under section 552.1175.

In summary, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, to the extent the information the city marked relates to individuals who are currently licensed as peace officers and who elect to restrict access to the information in accordance with section 552.1175(b), the city must withhold the information it marked under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/mo

Ref: ID# 771125

Enc. Submitted documents

c: Requestor
(w/o enclosures)