



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2020

Mr. Evaristo Garcia, Jr.
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2020-27019

Dear Mr. Garcia:

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# 852219 (ORR# W030806).

The City of McAllen (the "city") received a request for information pertaining to a named employee. The city states it will withhold information pursuant to sections 552.024, 552.130(c), and 552.136(c) of the Government Code and Open Records Decision No. 684 (2009).¹ The city claims some of the submitted information is excepted from disclosure under section 552.102 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

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

¹ Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). If a governmental body redacts such information, it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). *See id.* § 552.024(c)(1)-(c)(2). Section 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 id.* § 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). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of seeking a decision from this office.

personal privacy[.]” Gov’t Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) exempts 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). We agree the city must withhold the submitted date of birth under section 552.102(a) of the Government Code.

The city also asks this office to issue a previous determination permitting the city to withhold the dates of birth of current and former employees of the city when the dates of birth are held in an employment context under section 552.102 of the Government Code. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). However, we decline to do so at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jm

Ref: ID# 852219

Enc. Submitted documents

c: Requestor
(w/o enclosures)