December 17, 2020

Ms. Roberta B. Cross  
Township Attorney  
The Woodlands Township  
2801 Technology Forest Boulevard  
The Woodlands, Texas 77381

OR2020-31688

Dear Ms. Cross:

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# 857637 (ORR# 2020-415).

The Woodlands Township (the “township”) received a request for information related to all employees of the township, including name, date of birth, age, position, department, personal and business e-mail addresses and telephone numbers, years of service, hire date, and salary. The township states it does not maintain information responsive to a portion of the request.1 The township states it is releasing some of the requested information. The township claims some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.137 of the Government Code. We have considered the exceptions the township claims and reviewed the submitted representative sample of information.2

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 The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See Econ. Opportunities Dev. Corp. v. Bustamante, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism’d); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

2 We 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.
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 township must withhold the employees’ dates 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 employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the township must withhold those employees’ home telephone numbers under section 552.117(a)(1) of the Government Code. Conversely, if the employees at issue did not timely request confidentiality under section 552.024, then the township may not withhold their information under section 552.117(a)(1).

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 within the remaining information are not excluded by subsection (c). Therefore, the township must withhold the public e-mail addresses within the remaining information under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the township must withhold the employees’ dates of birth within the submitted information under section 552.102(a) of the Government Code. To the extent the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the township must withhold those employees’ home telephone numbers under section 552.117(a)(1) of the Government Code. The township must withhold the public e-mail addresses within the remaining information under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The township must release the remaining information.

The township also asks this office to issue a previous determination permitting the township to withhold under section 552.102 of the Government Code the dates of birth of current and former employees of the township 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 673 (2001). After due consideration, we have decided to grant the township’s request on this matter. Therefore, this letter ruling authorizes the township to withhold the dates of birth of current and former township employees, when the dates of birth are held in an employment context, under section 552.102 of the Government Code. 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. App.—Texarkana 1979, writ ref’d n.r.e.); see also Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the township to withhold dates of birth of living current and former employees of the township. This previous determination is not applicable to dates of birth belonging to deceased former employees of the township. 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 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 township 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 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

Ref: ID# 857637

c: Requestor