



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 27, 2022

Ms. Gladis Sanchez
Open Government Analyst
City of La Porte
604 West Fairmont Parkway
La Porte, Texas 77571

OR2022-02290

Dear Ms. Sanchez:

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# 928375.

The City of La Porte (the "city") received a request for the unredacted ballot applications for all current members of the city council.¹ The city states it has released some of the requested information. The city claims some of the submitted information is excepted from disclosure under section 552.1175 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

Initially, we note the city has redacted from the submitted documents the precise information for which it seeks a ruling. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for

¹ The city states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

the information at issue. Gov't Code § 552.301(a), (e)(1)(D). In this instance, we are generally able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"). Thus, in the future, the city should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

Next, we note, and the city acknowledges, the submitted information is subject to section 1.012 of the Election Code, which provides, in relevant part:

(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. Thus, under section 1.012(a), the submitted information constitutes "election records" and the city must make it available to the public, except as provided by the Act. *See id.* § 1.012(a), (c). Accordingly, we will address the city's claimed exception to disclosure of the submitted information. Because sections 552.101 and 552.137 of the Government Code also protect information under the Act, we will consider their applicability to the information at issue.²

² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 argues some of the remaining information is subject to section 552.1175 of the Government Code, which provides, in part:

(a) This section applies only to:

...

(17) an elected public officer[.]

(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)(17), (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. *Cf.* 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). Accordingly, to the extent the information at issue consists of the home address, home telephone number, or cellular telephone number of an elected public official, the city must withhold such information under section 552.1175 of the Government Code if the individual to whom the information pertains elects to restrict

access to the information in accordance with section 552.1175(b); however, the city may withhold the cellular telephone number at issue only if a governmental body does not pay for the cellular telephone service. If the individual to whom the information relates does not make an election under section 552.1175(b) or if the individual's address is a post office box number, then the city may not withhold the information at issue under section 552.1175.

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 id.* § 552.137(a)-(c). Section 552.137 is not applicable to an e-mail address that a governmental entity maintains for one of its officials or employees, or to a personal e-mail address belonging to a city employee or official used to conduct official government business. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of "members of the public" for purposes of Gov't Code § 552.137(a)). Accordingly, to the extent the e-mail addresses at issue belong to members of the public, the city must withhold such e-mail addresses under section 552.137, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See id.* § 552.137(b). However, to the extent the e-mail addresses at issue are excluded by subsection 552.137(c) or belong to a city employee or official and are used to conduct official government business, the e-mail addresses may not be withheld under section 552.137 of the Government Code.

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. To the extent the remaining information consists of the home address, home telephone number, or personal cellular telephone number of an elected public official, the city must withhold such information under section 552.1175 of the Government Code if the individual to whom the information pertains elects to restrict access to the information in accordance with section 552.1175(b). The city must withhold the personal 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 city must release the remaining information.

The city also asks this office to issue a previous determination that would permit it to withhold information under section 552.1175 of the Government Code without requesting a ruling from this office. Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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 <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/jxd

Ref: ID# 928375

Enc. Submitted documents

c: Requestor
(w/o enclosures)