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ATTORNEY GENERAL OF TEXAS

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OR2022-12852

Dear Mr. Peeler:

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# 944000.

The Harris County Emergency Services District No. 9 (the "district"), which you represent, received two requests from different requestors for election filing applications for a certain election. You state the district will redact certain e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.1175 and of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

We note, and the district 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.

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<sup>1</sup> Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

<sup>2</sup> 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.

(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 district must make it available to the public, except as provided by the Act. *See id.* § 1.012(a), (c). Accordingly, we will address the district’s claimed exceptions to 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 district must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of specified categories of individuals. *See* Gov’t Code § 552.117. However, we note 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 to section 552.117 is to protect certain information during and after employment relationship), 530 (1989) (discussing interplay between sections 552.024 and 552.117), 455 (1987). As previously noted, the information at issue constitutes election records the district maintains in accordance with the Election Code, not employment records. Therefore, the district may not withhold any of the remaining information under section 552.117 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175. Section 552.1175 applies, in part, to “an elected

public officer[.]” *Id.* § 552.1175(a)(17). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Accordingly, if the individuals whose information is at issue elect to restrict access to the information at issue in accordance with section 552.1175(b) of the Government Code, then the district must withhold the information it marked under section 552.1175 of the Government Code; however, the cellular telephone number at issue 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 do not elect to restrict access to their information in accordance with section 552.1175(b), then the district may not withhold the information at issue under section 552.1175 of the Government Code.

In summary, the district must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. If the individuals whose information is at issue elect to restrict access to the information at issue in accordance with section 552.1175(b) of the Government Code, then the district must withhold the information it marked under section 552.1175 of the Government Code; however, the cellular telephone number at issue may be withheld only if a governmental body does not pay for the cellular telephone service. The district 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 <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,

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMH/mo

Ref: ID# 944000

c: Requestor