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ATTORNEY GENERAL OF TEXAS

May 13, 2022

Ms. Aliceson Cotton
Counsel for the City of Melissa
Abernathy Roeder Boyd Hullett
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75070-1210

OR2022-13846

Dear Ms. Cotton:

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# 947477.

The City of Melissa (the "city"), which you represent, received a request for a list of candidates who filed applications for a specified election. The city states it is releasing some of the requested information. The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code.¹ 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:

(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.

...

¹ Although the city also 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.

(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 exceptions to disclosure of the submitted information. Because section 552.137 of the Government Code also protects information under the Act, we will also consider the applicability of this exception to the submitted information.²

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.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure; [and]

(17) an elected public officer[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual

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

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), 17); (b). The information we marked consists of the home addresses, cellular telephone numbers, and family member information of individuals who may be among the types of individuals listed in section 552.1175(a). *See id.*; *cf. id.* Gov't Code § 552.117(c)) (providing "family member" has meaning assigned by Fin. Code § 31.006(d). Thus, to the extent the information we marked relates to an individual to whom section 552.1175 applies, the city must withhold the information we marked under section 552.1175 if the individual to whom the information pertains elects to restrict access to the information in accordance with section 552.1175(b). To the extent the individuals at issue are not individuals to whom section 552.1175 applies or no election is made, the city may not withhold the marked information 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* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

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 information we marked relates to an individual to whom section 552.1175 applies, the city must withhold the information we marked under section 552.1175 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 we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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 <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/mo

Ref: ID# 947477

Enc. Submitted documents

c: Requestor
(w/o enclosures)