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ATTORNEY GENERAL OF TEXAS

July 26, 2022

Mr. Francisco J. Garza
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P.O. Box 1635
Weslaco, Texas 78599

OR2022-21876

Dear Mr. Garza:

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# 960200.

The City of Peñitas (the "city"), which you represent, received a request for campaign treasurer forms and applications for a place on the ballot filed during a defined period of time. We understand the city released information to the requestor, but made redactions as permitted by section 552.1175(f) of the Government Code without requesting a decision from this office. We also note the city redacted information under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009). Pursuant to section 552.1175(g), the requestor has asked this office to review the information redacted by the city and render a decision as to whether it is excepted from disclosure under section 552.1175(a) of the Government Code. The city also claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the city's position.

Initially, we note the submitted information is subject to section 1.012 of the Election Code, which provides, in relevant part, the following:

- (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. Therefore, under section 1.012(a), the city must make the submitted information available to the public, except as provided by the Act. Accordingly, we will address the submitted arguments against 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 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, or special investigators as described by Article 2.122, Code of Criminal Procedure;

(2) current or honorably retired county jailers as defined by Section 1701.001, Occupations Code;

(3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;

- (4) commissioned security officers as defined by Section 1702.002, Occupations Code;
- (5) a current or former district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;
- (5-a) a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;
- (6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b);
- (7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure;
- (8) current or honorably retired police officers and inspectors of the United States Federal Protective Service;
- (9) current and former employees of the office of the attorney general who are or were assigned to a division of that office the duties of which involve law enforcement;
- (10) current and former juvenile probation and detention officers certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code;
- (11) current or former employees of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code; and
- (12) current or former employees of the Texas Juvenile Justice Department or the predecessors in function of the department.
- (13) federal judges and state judges as defined by Section 1.005, Election Code;
- (14) current or former employees of the Texas Civil Commitment Office or of the predecessor in function of the office or a division of the office;
- (15) a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those

branches of the armed forces, or the Texas military forces, as that term is defined by Section 437.001;

(16) a current or former child protective services caseworker, adult protective services caseworker, or investigator for the Department of Family and Protective Services or a current or former employee of a department contractor performing child protective services caseworker, adult protective services caseworker, or investigator functions for the contractor on behalf of the department;

(17) an elected public officer; and

(18) a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code[; and]

(19) a current or former United States attorney, assistant United States attorney, federal public defender, deputy federal public defender, or assistant federal public defender.

Gov't Code § 552.1175(a). Section 552.003 of the Government Code provides,

(1-b) "Honorably retired" means, with respect to a position,

(A) previously served but is not currently serving in the position;

(B) did not retire in lieu of any disciplinary action;

(C) was eligible to retire from the position or was ineligible to retire only as a result of an injury received in the course of the individual's employment in the position; and

(D) is eligible to receive a pension or annuity for service in the position or is ineligible to receive a pension or annuity only because the entity that employed the individual does not offer a pension or annuity to its employees.

Id. § 552.003(1-b). If information concerns an individual listed in section 552.1175(a), then section 552.1175(b) provides,

(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.

Id. § 552.1175(b). 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). We note a post office box number is not a "home address" for purposes of section 552.1175. *See* 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). The remaining information includes home addresses, home phone, and a cellular phone number of individuals who may be among the types of individuals listed in section 552.1175(a). Thus, to the extent the remaining information consists of the home address, home phone number, or cellular phone number of an individual to whom section 552.1175 applies, the city must withhold the home address, home phone number, or cellular phone number at issue 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); however, the cellular phone number may only be withheld if a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 678 (if county registrar receives request for voter registration list, list released to member of the public under section 18.008 must not include the residence address of a peace officer who has submitted a proper notification under section 552.1175). However, to the extent the information relates to an individual to whom section 552.1175 does not apply or if no election is made, the city may not withhold the information at issue under section 552.1175.

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 submitted information consists of the home address, home phone number, or cellular phone number of an individual to whom section 552.1175 applies, the city must withhold the home address, home phone number, or cellular phone number at issue 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); however, the cellular phone number may only be withheld if a governmental body does not pay for the cellular telephone service. 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,

Jahna Ward
Assistant Attorney General
Open Records Division

JW/mo

Ref: ID# 960200

Enc. Submitted documents

c: Requestor
(w/o enclosures)