



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2022

Ms. Heather Rutland
Counsel for the Mission Consolidated Independent School District
Eichelbaum, Wardell, Hansen, Powell & Munoz, P.C.
4201 West Parmer Lane, Suite A-100
Austin, Texas 78727

OR2022-22871

Dear Ms. Rutland:

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# 961363.

The Mission Consolidated Independent School District (the "district") received a request for information pertaining to solicitation number 103-22-0 for Delinquent Tax Attorney Services. Although the district takes no position as to whether the submitted information is excepted under the Act, the district states release of the submitted information may implicate the proprietary interests of Linebarger Goggan Blair & Sampson ("Linebarger"). Accordingly, the district states, and provides documentation showing, it notified Linebarger of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Linebarger. We have considered the submitted arguments and reviewed the submitted information.

Section 552.110(c) of the Government Code excepts from disclosure "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the

information was obtained[.]” Gov’t Code § 552.110(c). Linebarger argues portions of its information consist of commercial or financial information subject to section 552.110(c). Upon review, we find Linebarger has demonstrated this information, which we indicated, constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the district must withhold the information we indicated under section 552.110(c) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101.¹ 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. *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 the date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information may be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district must withhold the information we indicated under section 552.110(c) of the Government Code. The district must withhold the date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The district must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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.

¹ 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).

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,

Michelle Garza
Attorney
Open Records Division

MRG/jxd

Ref: ID# 961363

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)