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ATTORNEY GENERAL OF TEXAS

August 23, 2022

Counsel for Cinco Southwest MUD# 2
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OR2022-25402

Dear Counsel:

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# 968338 (PIR No. OR96558622).

You represent a municipal utility district which received a request for information pertaining to the district's 2022 board of directors election, including applications to be placed on the ballot; certain signed orders and notices; certain e-mails and specified contracts; and other specified information. You state the district does not have information responsive to some of the request.[57] You also state the district has released some information, including the requested meeting minutes to the extent such information is responsive. You state the district redacted e-mail addresses within the requested candidate ballot applications under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).[58] You claim the remaining information at issue is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

[57] The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

[58] Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

> (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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> . . .
>
> (c) Except as otherwise provided by this code or [the Act], all election records are public information.
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> (d) In this code, "election record" includes:
>
> > (1) anything distributed or received by government under this code;
> >
> > . . .
> >
> > (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)(1), (d)(3). Section 141.035 of the Election Code also 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), this information constitutes "election records" and the district must make it available to the public, except as provided by the Act. Accordingly, we will address your arguments against disclosure of the submitted election records.

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(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1); Open Records Decision No. 622 (1994). However, 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). The information at issue constitutes election records the district

maintains in accordance with the Election Code, and not in an employment capacity. Thus, the district may not withhold any of the submitted information under section 552.117(a)(1) of the Government Code.

We note some of the submitted election records may be subject to section 552.1175 of the Government Code, which provides, in part:

> (a) This section applies only to:
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> . . .
>
> (17) an elected public officer[.]
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> (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:
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> (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).[59] 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). Accordingly, to the extent the remaining information in the election records consists of the home address; the home telephone number; or the cellular telephone number of an elected public officer, the district must withhold such information under section 552.1175 of the Government Code if the elected public officer to whom the information pertains elects to restrict access to the information in accordance with section 552.1175(b); however, the district may withhold the cellular telephone numbers at issue only if a governmental body does not pay for the cellular telephone service. If the individual to whom the information relates is not an elected public officer or does not make an election under section 552.1175(b), then the district may not withhold the information at issue under section 552.1175.

Section 552.101 of the Government also encompasses section 182.052 of the Utilities Code, which provides, in relevant part:

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[59] 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).

> (a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, unless the customer requests that the government-operated utility disclose the information.
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> (b) A customer may request disclosure of information described by Subsection (a) by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(2) or any other written request for disclosure.

Util. Code § 182.052(a)-(b). "Personal information" under section 182.052(a) means an individual's address, telephone number, or social security number, but does not include the individual's name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). Water service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). Section 182.052, by its own terms, applies only to personal information in a customer's account record. The information at issue pertains to information in election records, not utility customers' account records. Accordingly, we find the district has not demonstrated any of the remaining information is protected by section 182.052. Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code.

Section 552.136 of the Government Code states "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."[60] Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Thus, the district must withhold the bank routing numbers, cellular telephone account numbers, utility account numbers, and the SWIFT code numbers in the remaining information under section 552.136 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 are an elected public officer and 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 that individual's home address, the home telephone number, and the cellular telephone number in the election records under section 552.1175 of the Government Code; however, the district may withhold the cellular telephone numbers at issue only if a governmental body does not pay for the cellular telephone service. The district must withhold the bank routing numbers, cellular telephone account numbers, utility account numbers, and the SWIFT code numbers under section 552.136 of the Government Code. The district must release the remaining requested information.

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[60] 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 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,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/

Ref: ID# 968338

Enc. Submitted documents

c: Requestor
(w/o enclosures)