



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 23, 2015

Mr. Blake Armstrong
Counsel for the City of Mineola
Birdsong & Armstrong, P.C.
211 East Houston Street
Tyler, Texas 75702

OR2015-12362

Dear Mr. Armstrong:

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# 568062.

The City of Mineola (the "city"), which you represent, received a request for documents relating to the investigation and dismissal of two named officers. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed 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. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

¹We note the city failed to comply with section 552.301 of the Government Code in requesting a ruling; however, section 552.101 of the Government Code is a mandatory exception that constitutes a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code 552.007..301, .302, .352. Accordingly, we will consider the city's argument against disclosure.

[T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You claim the submitted information was used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). The submitted information consists of internal administrative investigations. However, one of these internal affairs investigations contains information that was used or developed in an investigation of alleged or suspected child abuse. Thus, we find this information, which we have marked, is within the scope of section 261.201 of the Family Code. The city does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986)* (predecessor statute). However, we find you have failed to demonstrate the remaining information at issue involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 of the Family Code, or this information was used or developed in an investigation under chapter 261. Accordingly, the city may not withhold the remaining information at issue under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *Cf.* Fam. Code § 261.201. The submitted information contains the identifying information of juvenile victims of alleged abuse. Accordingly, the city must withhold the identifying information of the juvenile victims, which we have indicated, in the submitted documents under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”² Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Therefore, the city must withhold the information we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.³ Gov’t Code § 552.117(a)(2). We note section 552.117(a)(2) 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). In this instance, we are unable to determine whether the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12. Thus, we must rule conditionally. To the extent the individuals at issue are currently licensed peace officers as defined by article 2.12, the city must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code; however, the city may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. However, to the extent the individuals at issue are no longer licensed peace officers as defined by article 2.12, the city may not withhold the information at issue under section 552.117(a)(2) of the Government Code.

If the individuals at issue are no longer licensed peace officers, their personal information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) 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 of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* §§ 552.024, .117(a)(1). We note section 552.117(a)(1) is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information.

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

³Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

See Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individuals at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked and indicated under section 552.117(a)(1) of the Government Code; however, the city may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. However, to the extent the individuals at issue did not timely request confidentiality under section 552.024 of the Government Code, the city may not withhold the information we have marked and indicated under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code, § 552.130. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold the identifying information of the juvenile victims, which we have indicated, in the submitted documents under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.102(a) of the Government Code. To the extent the individuals at issue are currently licensed peace officers as defined by article 2.12, the city must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code. To the extent the individuals at issue are no longer licensed peace officers, then to the extent the individuals at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked and indicated under section 552.117(a)(1) of the Government Code. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Paigelay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 568062

Enc. Submitted documents

c: Requestor
(w/o enclosures)