



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 17, 2015

Ms. Judith N. Benton  
Assistant City Attorney  
City of Waco  
Legal Services Department  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2015-16946

Dear Ms. Benton:

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# 581675 (Waco Ref. No. LGL-15-257).

The City of Waco (the "city") received a request for information pertaining to a specified arrest. You state the city has released some of the requested information. We understand the city will redact social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

<sup>2</sup>Although you do not raise section 552.101 of the Government Code in your brief, we understand you to raise this exception based on your markings.

<sup>3</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

(a) [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.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). The submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and

has not been married or who has not had the disabilities of minority removed for general purposes). Thus, we find the submitted information is generally confidential under section 261.201 of the Family Code. We note, the requestor is a parent of the child victims. Further, the requestor is not alleged to have committed the suspected abuse. Therefore, the city may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* § 261.201(k).

We note the reporting party is an attorney representing the requestor. Thus, we find to construe section 261.201(1)(3) to require a governmental body to withhold the identifying information of a reporting party from a requestor with a section 261.201(k) right of access when the reporting party is the authorized representative of the requestor would lead to an absurd result that the legislature could not have intended. *See Hernandez v. Ebrom*, 289 S.W.3d 316, 318 (Tex. 2009) (unambiguous statutory language is interpreted according to its plain language unless such an interpretation would lead to absurd results); Attorney General Opinion GA-0876 (2011). Section 261.201(1)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. Fam. Code § 261.201(1)(2). Therefore, we will consider the applicability of other exceptions to disclosure.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue, which you have highlighted, relates to a criminal case that is open and pending. Based upon your representation, we conclude release of the information you have highlighted would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the city may withhold the information you have highlighted under section 552.108(a)(1) of the Government Code.

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. Types of information considered highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455* (1987). We note dates of birth of members of the public are generally not highly

intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). Upon review, we find you have not demonstrated how the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>4</sup> Section 552.130 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(a). Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The city must withhold the 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](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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/cbz

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<sup>4</sup>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).

Ref: ID# 581675

Enc. Submitted documents

c: Requestor  
(w/o enclosures)