



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 26, 2015

Ms. Julie P. Doshier  
Counsel For City of Lancaster  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard Street  
Dallas, Texas 75201

OR2015-17868

Dear Ms. Doshier:

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# 582704 (Reference No. 72749).

The Lancaster Police Department (the "department"), which you represent, received a request for two specified police reports involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 information made confidential by section 261.201 of the Family Code, which provides, in relevant part, 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Report number 15-002631 consists of information used or developed in an investigation of alleged or suspected abuse or neglect under chapter 261 of the Family Code. Accordingly, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for the purposes of this section as a 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). As we have no indication the department has adopted a rule governing the release of this type of information, we assume that no such regulation exists. Given that assumption, and based on our review, we conclude report number 15-002631 is confidential pursuant to section 261.201 of the Family Code, and, the department must withhold it under section 552.101 of the Government Code on that basis.<sup>1</sup>

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 intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. You seek to withhold dates of birth of members of the public under common-law privacy. 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). Additionally, although you reference *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin, May 22, 2015, pet. filed) (mem. op.), we note a petition for review was filed with the Texas Supreme Court on July 29, 2015. Upon review, we find the department has failed to demonstrate the information at issue is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication.<sup>2</sup> Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state some of the remaining information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information, and the department may withhold the information you have marked in report number 15-001823 on that basis.

In summary, the department must withhold report number 15-002631 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department may withhold the information you have marked in report number 15-001823 under section 552.108(a)(2) of the Government Code. The department 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,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLG/cz

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<sup>2</sup>Although you cite to section 552.108(b)(2) of the Government Code in your briefing to this office, we understand you to raise section 552.108(a)(2) of the Government Code based on the substance of your arguments.

Ref: ID# 582704

Enc. Submitted documents

c: Requestor  
(w/o enclosures)