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ATTORNEY GENERAL OF TEXAS

September 23, 2015

Ms. Stacie S. White
Counsel for the Town of Flower Mound
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2015-19989

Dear Ms. White:

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# 580304.

The Town of Flower Mound (the "town"), which you represent, received a request for any police records for two named individuals and a specified address. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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 information protected by other statutes, such as section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). Upon review, we find a portion of the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. You have not indicated the town has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information at issue is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the town must generally withhold the information at issue from disclosure under section 552.101 of the Government Code.

However, section 261.201 provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). Subchapter E of chapter 264 of the Family Code concerns the establishment and duties of children’s advocacy centers. *See id.* §§ 264.401-.411. Section 264.405 of the Family Code directs children’s advocacy centers to provide services for victims of child abuse and their families. *Id.* § 264.405. Furthermore, section 264.408(c) of the Family Code provides “a law enforcement agency . . . may share with a [children’s advocacy] center information that is confidential under Section 261.201 as needed to provide services” under chapter 264 of the Family Code. *Id.* § 264.408(c).

In this instance, the requestor states she is a representative of Court Appointed Special Advocates of Denton County (“CASA”). However, the requestor does not state whether she seeks the information at issue in order to provide services under chapter 264 of the Family Code. Therefore, we must rule conditionally. If the town determines the information is needed to provide services under chapter 264 of the Family Code, then the town may release the information to this requestor pursuant to section 264.408(c). We note information shared with or provided to CASA under section 264.408(c) retains its confidentiality under section 261.201. *See id.* If, however, the town does not determine the information is needed for services under chapter 264, then it may not release the information on that ground, and the town must withhold the information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, we address your argument for the remaining information. Section 552.101 also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code

of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 21, 2015 Tex. Sess. Law Serv. 4327, 4337 (to be codified as an amendment to Gov’t Code § 411.083(a)). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). We note CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the submitted information contains confidential CHRI. Thus, the CHRI we marked must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. You have failed to demonstrate the remaining information consists of CHRI for chapter 411 purposes. Thus, no portion of the remaining information at issue may be withheld under section 552.101 in conjunction with section 411.083.

Dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 also 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. In considering whether a public citizen’s date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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.). The supreme court concluded public employees’ dates of birth are private under section 552.102 of the Government Code because the employees’ privacy interest substantially outweighed the negligible public interest in disclosure.¹ *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens’ dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Thus, the town must withhold all public citizens’ dates of birth under section 552.101 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by this state or another state or country. Gov’t Code § 552.130(a)(1), (2).

¹Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a).

Accordingly, the town must withhold the motor vehicle record information we have marked under section 552.130.

In summary, the town must withhold the information we have indicated under section 552.101 in conjunction with 261.201, if the requestor does not request the information to provide services under chapter 264 of the Family Code. To the extent the requestor does request the information to provide services under chapter 264 of the Family Code, the town must release the information at issue. The town must withhold the CHRI we marked under section 552.101 in conjunction with section 411.083. The town must also withhold private citizens' dates of birth under section 552.101 in conjunction with common-law privacy and the marked motor vehicle information under section 552.130. The remaining information must be released.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 580304

Enc. Submitted documents

c: Requestor
(w/o enclosures)