



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2015

Ms. Aimee Alcorn
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2015-20560

Dear Ms. Alcorn:

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# 581481 (CCPD File No. APer4).

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor's daughter. We understand the department will redact motor vehicle record information under section 552.130(c) of the Government Code and social security numbers under section 552.147(b) of the Government Code.¹ Further, we understand the department will redact criminal history record information generated by the Federal Bureau of Investigation (the "FBI") pursuant to the previous determination issued in Open Records Letter No. 2011-17207 (2011).² You claim

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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 requesting a decision from this office under the Act. *Id.* § 552.147(b).

²Open Records Letter No. 2011-17207 authorized the department to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code without the necessity of requesting an attorney general's decision.

portions of the submitted information are 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. Section 552.101 encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides in part:

(a) Except as provided by Section 261.203, the 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

- (A) the child who is the subject of the report; or
 - (B) another child of the parent, managing conservator, or other legal representative requesting the information;
- (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), (l); Act of May 29, 2015, 84th Leg., R.S., ch. 734, § 82, 2015 Tex. Sess. Law Serv. 2218, 2244 (to be codified as an amendment to Fam. Code § 261.201(k)). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See* Fam. Code §§ 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code), 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. However, we note the requestor is a parent of one of the child victims listed in the information, and is not alleged to have committed the abuse. Therefore, the department may not withhold the submitted information from the requestor under section 261.201(a) of the Family Code. *See* Act of May 29, 2015, 84th Leg., R.S., ch. 734, § 82, 2015 Tex. Sess. Law Serv. 2218, 2244 (to be codified as an amendment to Fam. Code § 261.201(k)). However, section 261.201(l)(1) states the personally identifiable information of a victim or witness who is under the age of eighteen and is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld from disclosure. Fam. Code § 261.201(l)(1). Further, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3).

Upon review, we find the department must redact the identifying information of the victims who are not the requestor’s child and the identity of the person who made the report, which we have marked, pursuant to subsections 261.201(l)(1) and (l)(3). However, we find the remaining information you have marked is not subject to section 261.201(l)(1) or section 261.201(l)(3) of the Family Code and may not be withheld under section 552.101 of the Government Code on that basis. We note the department also must redact any information that is otherwise excepted from required disclosure under the Act pursuant to section 261.201(l)(2) of the Family Code. *Id.* § 261.201(l)(2). Thus, we will address whether any portion of the remaining information is excepted from disclosure.

Section 552.101 of the Government Code 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.³ *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 department must withhold the dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁴

In summary, the department must withhold the identifying information of the victims who are not the requestor's child and the identity of the person who made the report, which we have marked, under section 552.101 of the Government Code in conjunction with subsections 261.201(1)(1) and (1)(3) of the Family Code. The department must withhold the dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information to this requestor.⁵

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/>

³Section 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).

⁴The requestor has a right of access to her minor child's date of birth under section 552.023(a) of the Government Code. See Gov't Code § 552.023(a) ("[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

⁵We note the requestor has a special right of access to information being released, including a right of access to certain information pursuant to sections 58.007(e) and 261.201(k) of the Family Code. See Fam. Code §§ 58.007(e), 261.201(k). If the department receives another request for this information from a different requestor, then the department should again seek a decision from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

[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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 581481

Enc. Submitted documents

c: Requestor
(w/o enclosures)