



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 2015

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

OR2015-22990

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# 585271 (CCPD File Nos. MPar1, CLop2, and JSti1).

The Corpus Christi Police Department (the "department") received three requests from different requestors for information related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ 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. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides, in relevant part:

(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:

¹Although you do not raise section 552.130 of the Government Code in your brief, we understand you to assert this exception based on your markings.

(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, 2243-44 (Vernon) (to be codified as an amendment to Fam. Code § 261.201(k)). You claim the submitted information is subject to section 261.201 of the Family Code. Upon review, we agree the submitted information was used or developed in an investigation of alleged or suspected child abuse. See Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 4, 2015 Tex. Sess. Law Serv. 4310, 4312 (Vernon) (to be codified as an

amendment to Fam. Code § 261.001(1)) (defining “abuse” for purposes of Family Code chapter 261); *see also* Fam. 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 disabilities of minority removed for general purposes). Accordingly, the submitted information is within the scope of section 261.201 of the Government Code. The second requestor is not a parent, managing conservator, or other legal representative of the child victims in the submitted information. Further, you state the department has not adopted a rule that governs the release of this type of information. Therefore, the department must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

We note the first requestor is a parent of one of the child victims in the submitted information, and is not alleged to have committed the abuse or neglect. Furthermore, we note the third requestor is a legal representative of this same child victim. Thus, the department may not withhold the submitted information from these requestors under section 552.101 in conjunction with 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, 2243-44 (Vernon) (to be codified as an amendment to Fam. Code § 261.201(k)). However, section 261.201 also provides that before a record concerning a child can be copied or inspected by the child’s parent, managing conservator, or other legal representative under section 261.201(k), any personally identifiable information about a victim or witness under 18 years of age who is not the child of the parent, managing conservator, or other legal representative must be redacted. *See* Fam. Code § 261.201(l)(1). Thus, the department must withhold the identities of the juvenile witnesses and victims who are not the first requestor’s child or the third requestor’s client, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code.

Additionally, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(l)(3). You seek to withhold some of the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Section 261.201(l)(3) provides that 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 section 261.201(k), the identity of the person who made the report of alleged child abuse or neglect must be redacted. *Id.* Upon review, we find the information you marked does not consist of the identity of the reporting party for purposes of section 261.201(l)(3). Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Section 261.201(l)(2) states that any information excepted from required disclosure under the Act or other law must be withheld

²As our ruling is dispositive for this information with respect to the second requestor, we need not address your remaining argument against its disclosure.

from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider your remaining arguments against disclosure of this information.

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. 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. We note an individual has a special right of access under section 552.023 of the Government Code to the information pertaining to herself that would otherwise be private. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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). Thus, any information pertaining to the first requestor's child and the third requestor's client may not be withheld from them under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). Generally, a

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).

governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform this office the information you have marked relates to a pending criminal investigation. Based on this representation, we conclude section 552.108(a)(1) is applicable to the information at issue. *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 curium*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the information you have marked under section 552.108(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. Upon review, we find portions of the remaining information consist of motor vehicle record information. We note section 552.130 protects personal privacy. Accordingly, the first requestor has a right of access to his child's motor vehicle record information and the third requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from these requestors under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Thus, with the exception of the information relating to this individual, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the department must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With respect to the third requestor, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. With respect to the first and third requestors the department must: (1) withhold the identities of the juvenile witnesses and victims who are not the first requestor's child and the third requestor's client, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code, (2) withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (3) withhold the motor vehicle record information you have marked, with the exception of the information relating to the first requestor's child and the third requestor's client, under section 552.130 of the Government Code, and (4) release the remaining information.⁴

⁴We note the first and third requestors have a right of access to some of the information being released in this instance. *See Gov't Code* § 552.023(a); Act of May 29, 2015, 84th Leg., R.S., ch. 734, § 82, 2015 Tex. Sess. Law Serv. 2218, 2243-44 (Vernon) (to be codified as an amendment to Fam. Code § 261.201(k)). Thus, if the department receives another request for this information from a different requestor, the department must seek another ruling from this office.

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 black ink, appearing to read 'Tim Neal', with a stylized, cursive script.

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 585271

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)