



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 14, 2015

Mr. Grant Jordan  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2015-26261

Dear Mr. Jordan:

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# 590522 (Fort Worth Request No. W045948).

The City of Fort Worth (the "city") received a request for all reports pertaining to a named individual, including a specified report, and all police calls made from specified telephone numbers. You state you will release some information to the requestor. We understand you will redact information pursuant to section 552.130 and under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).<sup>1</sup> 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. Section 552.101 encompasses the doctrine of common-law privacy, which

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<sup>1</sup>We note section 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). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is 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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The requestor asks, in part, for all information held by the city concerning a named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the city maintains any unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the requestor also asks for information pertaining to a specified report. Because the requestor specifically asks for this information, it is not part of a compilation of the individual's criminal history and may not be withheld on that basis. Further, information that refers to an individual solely as a victim, witness, or involved person is not part of a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information that is either specifically requested or in which the named individual is not depicted as a suspect, arrestee, or criminal defendant. Therefore, this information is not confidential under common-law privacy as a compilation of common-law privacy, and the city may not withhold it under section 552.101 of the Government Code on that ground. Accordingly, we will address your arguments to withhold this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in relevant 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.

Fam. Code § 261.201(a). Upon review, we find Exhibit C-1 was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), *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). You have not indicated the city has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given the assumption, Exhibit C-1 is confidential under section 261.201 of the Family Code, and the city must withhold it under section 552.101 of the Government Code.

As stated above, section 552.101 of the Government of the Code encompasses the doctrine of common-law privacy, which protects the specific types of information the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See Indus. Found.*, 540 S.W.2d at 685. 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.<sup>2</sup> *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 the requestor has a special right of access under section 552.023 of the Government Code to her own date of birth and her minor children’s dates of birth. *See Gov’t Code* § 552.023(a) (person or person’s authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, with the exception of the requestor’s date of birth and her children’s dates of birth, the city must withhold all public citizens’ dates of birth under section 552.101 of the Government Code.

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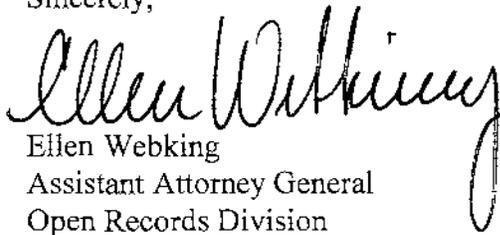
<sup>2</sup>Section 552.102(a) exempts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Gov’t Code* § 552.102(a).

In summary, to the extent the city maintains any unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold Exhibit C-1 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the requestor's date of birth and her children's dates of birth, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.<sup>3</sup>

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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 590522

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the requestor has a special right of access to some of the information being released. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Accordingly, the city must request another ruling if it receives a request for the same information from another requestor. *See id.* §§ 552.301, .302.