



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2015

Ms. Victoria D. Honey
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2015-26372

Dear Ms. Honey:

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# 590628 (ORR Nos. W045889 & 045892).

The City of Fort Worth (the "city") received two requests from the same requestor seeking all information pertaining to a named individual, including report number 13-83615. You state the city will withhold social security numbers pursuant to section 552.147(b) of the Government Code.¹ You state the city is releasing some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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. This office has found a compilation of an individual's criminal

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present requests, in part, seek all reports pertaining to a named individual. This aspect of the requests requires the city to compile the named individual's criminal history and implicates the privacy of the named individual. Therefore, to the extent the city maintains unspecified law enforcement records, other than information pertaining to report number 13-83615, listing the named individual as a suspect, arrestee, or criminal defendant, the city must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the requestor may be acting as the authorized representative of her husband, the individual whose privacy interest is at issue. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to 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 herself). If the requestor is acting as the authorized representative of her husband, then the requestor has a right of access to information pertaining to him that would otherwise be confidential under common-law privacy. Accordingly, if the requestor is acting as the authorized representative of her husband, then the city may not withhold any portion of the submitted information from this requestor under section 552.101 on the basis of her husband's common-law privacy interest.

We also note the city has submitted documents relating to report number 13-83615. This information is not part of a compilation of the named individual's criminal history, and the city may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of the information at issue.

Section 552.101 of the Government Code also encompasses information protected 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 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.

Fam. Code § 261.201(a), (k). Report number 13-83615 and a portion of the remaining information consist of reports of alleged or suspected child abuse or neglect made to the city's police department. *See 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), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information, which we have marked, is subject to chapter 261 of the Family Code. In this instance, the requestor may be acting as the authorized representative of her husband, who is a parent of the child victims listed in the information at issue. However, we note the requestor's husband is alleged to have committed the suspected abuse or neglect. Thus, regardless of whether the requestor is acting as her husband's authorized representative, the requestor does not have a right of access to the information we marked under section 261.201(k). *See id.* § 261.201(k). Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Portions of the remaining information are protected by section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the information at issue.

intimate and 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. *Indus. Found.* 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 city must generally withhold the public citizens' dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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. Thus, the city must generally withhold the motor vehicle record information you have marked, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code.

As noted above, however, the requestor may be acting as her husband's authorized representative. In that instance, the requestor has a right of access to her husband's otherwise private information under section 552.023 of the Government Code and it may not be withheld from her. *See id.* § 552.023(a); ORD 481 at 4. We note section 552.130 protects personal privacy. Accordingly, if the requestor is acting as her husband's authorized representative, then the city may not withhold his date of birth under section 552.101 of the Government Code in conjunction with common-law privacy and may not withhold the marked motor vehicle record information belonging to him under section 552.130 of the Government Code.

In summary, the city must withhold report number 13-83615 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is not acting as the authorized representative of her husband, then to the extent the city maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as the authorized representative of her husband, then the city

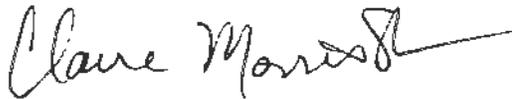
³Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

must (1) withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) with the exception of her husband's date of birth, withhold the dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) with the exception of her husband's motor vehicle record information, withhold the marked motor vehicle record information under section 552.130 of the Government Code; and (4) release the remaining information at issue.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 590628

Enc. Submitted documents

c: Requestor
(w/o enclosures)