



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 3, 2016

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2016-09954

Dear Mr. Dempsey:

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# 608654 (GCA #16-00106).

The Garland Police Department (the "department") received a request for all information involving the requestor, another named individual, or three specified addresses during a specified time period. 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 section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). Section 58.007 provides, in relevant part, the following:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

Id. § 58.007(c), (e) Upon review, we find most of the information you have marked involves alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (for purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age when the conduct occurred), .03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). The exceptions in section 58.007 do not appear to apply. Therefore, this information is confidential under section 58.007(c) of the Family Code. Although the requestor is a parent of one of the juvenile offenders at issue in the information at issue, we note the offender at issue is now an adult. Accordingly, the requestor no longer has a right of access to the information at issue. *See id.* § 58.007(e). Thus, with the exception of the information we have marked, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. However, we find the information we have marked consists of records of a suspect or offender who was seventeen years of age at the time of the reported conduct. As such, section 58.007 is not applicable to this information and the department may not withhold the information we have marked under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses information protected by 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 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.

Id. § 261.201(a), (k). Upon review, we find the information you have marked was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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). Thus, the information you have marked is subject to section 261.201 of the Family Code. Although the requestor is a parent of the child victim listed in the information at issue, the child victim is now an adult. Thus, the requestor no longer has a right of access to the information at issue under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must withhold the information you have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

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 intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, 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.*, 540 S.W.2d 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. Upon review, we find the information you have marked, along with the additional information we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestor has a right of access to his own private information. Gov't Code § 552.023(a); see Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Furthermore, we note the requestor is the spouse of one of the individuals whose privacy interests are at issue. Thus, the requestor may be the authorized representative of that individual, and may have a right of access under section 552.023 to information pertaining solely to his spouse that would otherwise be confidential under common-law privacy. Accordingly, if the requestor is acting as the authorized representative of his spouse, then the department may not withhold the portions of the marked information pertaining solely to the requestor's spouse from this requestor under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of his spouse, then the department must withhold the information you have marked pertaining solely to the requestor's spouse under section 552.101 in conjunction with common-law privacy. In either event, the department must withhold the information you have marked and the additional information we have marked not pertaining solely to the requestor's spouse 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.² See Gov't Code § 552.130(a). The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, with the exception of the information we have marked, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold the information you have marked in its entirety under section 552.101 of the Government Code

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).

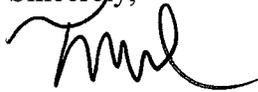
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481, 480 (1987), 470 (1987).

in conjunction with section 261.201(a) of the Family Code. If the requestor is not acting as the authorized representative of his spouse, then the department must withhold the information you have marked pertaining solely to the requestor's spouse under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked and the additional information we have marked not pertaining solely to the requestor's spouse under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining information.³

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bw

Ref: ID# 608654

Enc. Submitted documents

³Because the present requestor has a right of access to information the department would be required to withhold from the general public, the department must request another decision if it receives another request for this same information from a different requestor. See Gov't Code §§ 552.301(a), .302.