



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2016

Mr. Omar A. De La Rosa
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2016-10126

Dear Mr. De La Rosa:

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# 608475 (City Case # 16-1026-7132).

The El Paso City Attorney's Office (the "city attorney's office") received a request for all reports made by two named individuals during a specified time period. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 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. This exception encompasses information made confidential by other statutes, such as 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

¹Although the city attorney's office raises section 552.101 of the Government Code in conjunction with constitutional privacy generally, the city attorney's office makes no arguments to support this doctrine. Therefore, we assume the city attorney's office has withdrawn its claim section 552.101 in conjunction with constitutional privacy applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

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 case number 15-260240 was used or developed in an investigation by the El Paso Police Department (the “department”) of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201); *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). Thus, we find the information at issue is within the scope of section 261.201(a) of the Family Code. As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we find case number 15-260240 is generally confidential under section 261.201(a).

However, we note the requestor is an investigator with the Office of the El Paso County Public Defender (the “public defender’s office”). Section 261.201(a) of the Family Code provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1272 of the Government Code provides:

[A] public defender’s office [is] entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information [(“CHRI”)] maintained by [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender’s office has been appointed.

Gov’t Code § 411.1272. In addition, section 411.087(a) of the Government Code provides, in pertinent part, the following:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). We note CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Upon review, we find the information at issue contains CHRI. Thus, the requestor is authorized to obtain the CHRI in case number 15-260240 from the city attorney’s office pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender’s office is appointed and if release of the information is consistent with the Family Code. *See id.* § 411.1272; *see also* Fam. Code § 261.201(a). However, we are unable to determine whether the release of the CHRI in case number 15-260240 to the requestor is consistent with the Family Code. Therefore, if the city attorney’s office determines release of the CHRI to the requestor is not consistent with the Family Code or the information does not relate to a criminal case in which an attorney compensated by the public defender’s office is appointed, then the city attorney’s office must withhold case number 15-260240 in its entirety from the requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the city attorney’s office determines release of the CHRI to the requestor is consistent with the Family Code and the information relates to a criminal case in which an attorney compensated by the public defender’s office is appointed, then the city attorney’s office must release the information within case number 15-260240 that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Although you raise section 552.101 in conjunction with common-law privacy and section 552.108 of the Government Code for this information, a specific statutory right of access overcomes the common law and the general exceptions in the Act, such as section 552.108. *See CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In this instance, the city attorney’s office must withhold the remaining information within case number 15-260240 from the requestor under section 552.101 in conjunction with section 261.201(a).

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.² *Tex. 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, within case number 15-305010, the city attorney's office must withhold all public citizens' dates of birth under section 552.101 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. Accordingly, within case number 15-305010, the city attorney's office must withhold the motor vehicle record information we have marked under section 552.130.

In summary, if the city attorney's office determines release of the CHRI to the requestor is not consistent with the Family Code or the information does not relate to a criminal case in which an attorney compensated by the public defender's office is appointed, then the city attorney's office must withhold case number 15-260240 in its entirety from the requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the city attorney's office determines release of the CHRI to the requestor is consistent with the Family Code and the information relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the city attorney's office must release the information within case number 15-260240 that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In this instance, the city attorney's office must withhold the remaining information within case number 15-260240 from the requestor under section 552.101 in conjunction with section 261.201(a). Within case number 15-305010, the city attorney's office must withhold all public citizens' dates of birth under section 552.101 in conjunction with common-law privacy and the motor vehicle record

²Section 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).

information we have marked under section 552.130 of the Government Code. The remaining information in case number 15-305010 must be released.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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/akg

Ref: ID# 608475

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released contains social security numbers. 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 the necessity of requesting a decision from this office under the Act. *See Gov't Code § 552.147(b).*