



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 9, 2016

Ms. Michelle Buendia  
Assistant City Attorney  
Criminal Law & Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2016-10541

Dear Ms. Buendia:

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# 609203 (CN2015-151).

The Dallas Police Department (the "department") received a request for all information related to a named individual, including a specified internal investigation related to the named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. We have also reviewed and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). In this instance, you state, and submit documentation demonstrating, the department received the request for information on February 11, 2016. We note the department was closed on February 15, 2016. This office does not count the date the request

was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten-business-day deadline was February 26, 2016. However, you did not request a ruling from this office until March 1, 2016. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because sections 552.101, 552.117, 552.130, and 552.136 of the Government Code make information confidential, they can provide compelling reasons to withhold information; therefore, we will address the applicability of these sections to 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides, in part, the following:

(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:

- (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); *see id.* §§ 101.003(a) (defining "child" for purposes of chapter 261), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). The department claims the submitted information is confidential under

section 261.201. We note some of the information at issue, relating to a criminal investigation, was obtained from the Kaufman County Sheriff's Office (the "sheriff's office"). Upon review, we find the information we have marked was used or developed in the sheriff's office's investigation of alleged or suspected child abuse under chapter 261 and must be withheld under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(2) of the Family Code.<sup>1</sup> Further, the department must withhold the information identifying individuals who made a report of child abuse to the sheriff's office, which we have marked in the remaining information and noted in the submitted audio recordings, under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(1) of the Family Code. However, we find the remaining information relates to an internal affairs investigation by the department. You have not established this information consists of a report of child abuse or neglect nor does the information reveal the identity of an individual who made a report of suspected child abuse or neglect for the purposes of section 261.201(a)(1) of the Family Code. Furthermore, we find you failed to establish any of the remaining information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code and may not be withheld on the basis of subsection 261.201(a)(2). Therefore, none of the remaining information is confidential under section 261.201 of the Family Code and none of it may be withheld under section 552.101 of the Government Code on that basis.

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 found that common-law privacy protects the identifying information of juvenile victims of abuse or neglect. See Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. 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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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. However, we note information pertaining to an individual who has been de-identified is not excepted under common-law privacy, as his or her privacy interest is protected.

Upon review, we find the submitted information contains the identifying information of juvenile victims. Therefore, the department must withhold the identifying information we marked in the submitted documents, as well as the corresponding information within the submitted audio recordings, under section 552.101 of the Government Code in conjunction with common-law privacy. However, some of the remaining information you have marked pertains to individuals who have been de-identified and whose privacy interests are, thus, protected. Accordingly, with the exception of the information we have marked for release, the department must withhold the information you have marked and we have marked, as well as the corresponding information within the submitted audio recordings, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. Gov't Code § 552.117(a). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117(a)(2) is not applicable to an individual's girlfriend, former girlfriend, former spouse, or the fact that the employee has been divorced. We also note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Further, we note some of the information you have marked, which we have marked for release, is not subject to section 552.117(a)(2) of the Government Code. With the exception of the information we have marked for release, the department generally must withhold the information you have marked and the information we have indicated in the submitted audio recordings under section 552.117(a)(2) of the Government Code. However, we are unable to determine from the information provided whether the individual named in the request is currently a licensed peace officer. To the extent this individual is currently a licensed peace officer as defined by article 2.12, the department must withhold his marked and indicated information under section 552.117(a)(2) of the Government Code. However, the marked cellular telephone number may be withheld only

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<sup>2</sup>Section 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).

if a governmental body does not pay for the cellular telephone service. Conversely, if the individual at issue is not a currently-licensed police officer as defined by article 2.12, his marked and indicated information may not be withheld under section 552.117(a)(2) of the Government Code.

If the individual named in the request is not a licensed peace officer, then his personal information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). As previously noted, section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, to the extent the individual named in the request timely requested confidentiality under section 552.024 of the Government Code, the department must withhold his information, which we have marked and indicated in the audio recordings and you have marked, under section 552.117(a)(1) of the Government Code. However, the department may only withhold the marked cellular telephone numbers if a governmental body did not pay for the service. To the extent the individual named in the request did not timely request confidentiality under section 552.024, the department may not withhold the marked and indicated information under section 552.117(a)(1).<sup>3</sup>

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(a). The department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We understand the employee identification numbers you have marked are used in conjunction with one additional digit to access city

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<sup>3</sup>We note even if section 552.117 is inapplicable, section 552.147(b) authorizes a governmental body to withhold a living person's social security number without requesting a decision from this office. Gov't Code § 552.147(b).

credit union bank accounts. We therefore conclude the department must withhold the information you have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>4</sup> *See id.* § 552.137(a)-(c). The e-mail address at issue is not of a type excluded by subsection (c). Therefore, the department must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.<sup>5</sup>

In summary, the department must withhold the information we have marked and noted in the submitted audio recordings under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the information we have marked for release, the department must withhold the information you have marked and we have marked, as well as the corresponding information within the submitted audio recordings, under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the department must withhold the information you have marked and the information we have indicated in the submitted audio recordings under section 552.117(a)(2) of the Government Code. However, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. If the individual named in the request is currently a licensed peace officer as defined by article 2.12, the department must withhold his marked and indicated information under section 552.117(a)(2) of the Government Code. Conversely, if the individual at issue is not a currently-licensed police officer as defined by article 2.12, his marked and indicated information may not be withheld under section 552.117(a)(2) of the Government Code. In this instance, to the extent the individual named in the request timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the marked and indicated information under section 552.117(a)(1) of the Government Code. However, the department may only withhold the marked cellular telephone number if a governmental body did not pay for the service. The department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The department must withhold the information you have marked under section 552.136 of the Government Code. The

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<sup>4</sup>The 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 (1987), 480 (1987), 470 (1987).

<sup>5</sup>We note Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

department must withhold the e-mail address we have marked under section 552.137 of the Government Code. The remaining information must be released.

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,



Kavid Singh  
Assistant Attorney General  
Open Records Division

KVS/som

Ref: ID# 609203

Enc. Submitted documents

c: Requestor  
(w/o enclosures)