



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 13, 2016

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road, Building 1
Cedar Park, Texas 78613

OR2016-13432

Dear Ms. Quinn:

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# 620298 (Cedar Park Ref. No. 16-759).

The City of Cedar Park (the "city") received a request for information pertaining to all police department no-knock and knock-and-announce search operations during a certain period. You state the city will release some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 of the Government Code encompasses section 261.201(a) of the Family Code, which provides:

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) Except as provided by Section 261.203, the 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.

Id. § 261.201(a). Upon review, we find the information you have marked was used or developed in an investigation of alleged child abuse or child neglect. *See id.* §§ 261.001 (defining “neglect” for purposes of chapter 261 of the Family Code), 261.001(1)(E) (definition of “abuse” for purposes of Fam. Code ch. 261 includes indecency with a child under Penal Code section 21.11); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261), Penal Code § 21.11(a) (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age). You state the city has not adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 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. Additionally, 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.² *Texas Comptroller*, 354 S.W.3d at 347-48.

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).

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 withhold the dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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). *See Gov't Code* § 552.137(a)-(c). The e-mail address you have marked is not excluded by subsection (c). Therefore, the city must withhold the personal e-mail address you have marked under section 552.137 of the Government Code, unless its owner affirmatively consents to public disclosure.

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). Upon review, we find some of the information you marked includes motor vehicle record information. However, you have failed to demonstrate that any of the remaining information you have marked, which we have marked for release, is subject to section 552.130. Accordingly, with the exception of information we have marked for release, the city must withhold the information you marked under section 552.130 of the Government Code.

In summary, the city 1) must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; 2) must withhold the dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy; 3) must withhold the personal e-mail address you have marked under section 552.137 of the Government Code, unless its owner affirmatively consents to public disclosure; and 4) with the exception of information we have marked for release, must withhold the information you marked under section 552.130 of the Government Code.

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,

A handwritten signature in black ink, appearing to read "Jesse Harvey". The signature is written in a cursive style with a large, sweeping flourish at the end.

Jesse Harvey
Assistant Attorney General
Open Records Division

JH/eb

Ref: ID# 620298

Enc. Submitted documents

c: Requestor
(w/o enclosures)