



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 14, 2016

Mr. Jonathan T. Koury
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2016-13513

Dear Mr. Koury:

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# 617357.

The City of Bryan (the "city") received a request for a specified police case file. 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 information protected by other statutes, including section 261.201 of the Family Code, which provides, in part:

(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.

...

(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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information; [and]

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(1)-(2). Upon review, we find the submitted information was used or developed in an investigation by the city's police department of alleged or suspected child abuse or neglect for purposes of section 261.201. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of Family Code); *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 disabilities of minority removed for general purposes). Therefore, we conclude this information is subject to section 261.201(a). We note, however, the requestor, who is not alleged to have committed the alleged or suspected child abuse or neglect, may be a parent, managing conservator, or other legal representative of the child victim at issue. *See id.* § 261.201(k). Thus, we must rule conditionally. If the

requestor is not a parent, managing conservator, or other legal representative of the child victim at issue, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ If the requestor is a parent, managing conservator, or other legal representative of the child victim, the city may not withhold the submitted information from the requestor under section 261.201(a). *See id.* However, section 261.201(l)(1) states the personally identifiable information of a victim or witness who is under the age of eighteen and is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld from disclosure. *Id.* § 261.201(l)(1). Thus, in conjunction with section 552.101 of the Government Code, the city must withhold the identifying information of the juvenile witnesses we have marked under section 261.201(l)(1) of the Family Code. In addition, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). As you raise section 552.101 of the Government Code in conjunction with common-law privacy for the submitted information, we will consider your arguments for the submitted information.

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 *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, because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded[.]" *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded" (quoting RESTATEMENT

¹In this instance, as our ruling is dispositive, we need not address your arguments against disclosure of the submitted information.

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).

(SECOND) OF TORTS § 652I (1977)); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Thus, the city may not withhold information pertaining solely to the deceased individual under section 552.101 of the Government Code in conjunction with common-law privacy. Furthermore, we note the requestor may be a parent, managing conservator, or other legal representative of some of the individuals at issue. In that case, the requestor has a special right of access to information related to these individuals that would otherwise be protected under common-law privacy under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, to the extent the requestor is a parent, managing conservator, or other legal representative of the individuals at issue, the city may not withhold the dates of birth related to these individuals from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city must withhold any remaining living, identifiable public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we conclude the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

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.³ *See* Gov’t Code § 552.130. To the extent the requestor is a parent, managing conservator, or other legal representative of any of the individuals at issue the city may not withhold the motor vehicle record information relating to these individuals pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b); ORD 481 at 4. However, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not a parent, managing conservator, or other legal representative of the child victim at issue, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a parent, managing conservator, or other legal representative of the child victim, then the city must: (1) withhold the identifying information of the juvenile witnesses we have marked under section 552.101 of

³The 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).

the Government Code in conjunction with 261.201(l)(1) of the Family Code; (2) withhold any remaining living, identifiable public citizens' dates of birth to which the requestor does not have a right of access under section 552.101 of the Government Code in conjunction with common-law privacy; (3) withhold the motor vehicle record information we have marked to which the requestor does not have a right of access under section 552.130 of the Government Code; and (4) release the remaining information.⁴

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# 617357

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴If the requestor is a parent, managing conservator, or other legal representative of the child victim, we 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b). However, to the extent the requestor has a right of access to any living individual's social security number, the city may not withhold those social security numbers from this requestor. *See generally id.* § 552.023(b); ORD 481 at 4.