



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2016

Ms. Judy Hickman
Assistant Supervisor
Records Division
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2016-14119

Dear Ms. Hickman:

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# 615351.

The Beaumont Police Department (the "department") received a request for three categories of information, including (1) all records pertaining to a specified incident; (2) all e-mails maintained by the department which include one of five specified search terms during a specified time period; and (3) all information, including reports, documents dispatch notes, calls for service, and other records, related to six specified names during a specified time period.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the

¹You state the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

exceptions you claim and reviewed the submitted representative sample of information.² We have also received 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).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 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. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert the present request, in part, requires the department to compile unspecified law enforcement records concerning named individuals other than the requestor, thus implicating those individuals' rights to privacy. However, upon review of the request and the submitted information, we find the requestor is seeking a specified report and reports involving himself and the named individuals. We note you have submitted the specified report and we note the remaining submitted reports list the requestor as an involved party. Thus, this request does not implicate the named individuals' rights to privacy, and the department may not withhold any of the submitted reports under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of any individual's criminal history. However, we will consider your remaining arguments against release of the submitted information.

You contend complying with the portion of the request pertaining to the dispatch records is unduly burdensome as you can only search by specific addresses, dates, and times. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information in existence at the time of the request. *See Econ. Opportunities Dev. Corp.*

²We 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 those records contain substantially different types of information than that submitted to this office.

v. Bustamante, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *see also* Open Records Decision No. 561 at 8–9 (1990). Moreover, a governmental body may not refuse to comply with a request on the ground of administrative inconvenience. *See Indus. Found v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). In this instance, you have submitted a representative sample of information, Exhibit E, that is responsive to this portion of the request, and you have made arguments against disclosure of this information. Accordingly, we assume the department has made a good-faith effort to relate this request to information the department holds, and we will address the applicability of your arguments to the submitted information. Additionally, we note, to the extent the specific address, date, and time information can be obtained from the information in Exhibit E, and utilized to retrieve the dispatch records, the department must do so when complying with this ruling.

You inform us a portion of the responsive information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-11633 (2016). In that ruling, we determined (1) with the exception of the marked court-filed documents subject to section 552.022(a)(17) and the basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code and (2) in releasing the marked court-filed documents, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the department may rely on Open Records Letter No. 2016-11633 as a previous determination and withhold or release the identical information, which we have marked, in accordance with that ruling.³ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part, as follows:

(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

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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:

...

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

Fam. Code § 261.201(a), (k), (l)(2). You state, and we agree, Exhibits B and C consist of reports of alleged or suspected child abuse or neglect made to the department. *See 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find the reports at issue are subject to section 261.201 of the Family Code. We note the requestor is a parent of the child victim listed in the reports at issue. However, in report number 2015-025594, the requestor is alleged to have committed the suspected abuse or neglect. Thus, the requestor does not have a right of access to report number 2015-025594 under section 261.201(k). *See id.* § 261.201(k). Therefore, we conclude report number 2015-025594 is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.⁴ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

However, in Exhibit B and report number 2016-002012, we note the requestor is not alleged to have committed the abuse or neglect. Thus, pursuant to section 261.201(k), Exhibit B and report number 2016-002012 may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, 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). Accordingly, we will consider your remaining arguments against disclosure of the remaining information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit F pertains to pending criminal investigations. Based on your representation and our review, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to Exhibit F.

Section 552.108(b)(2) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(b)(2). A governmental body claiming section 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit B pertains to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(b)(2) is applicable to Exhibit B.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, the department may withhold Exhibit F under section 552.108(a)(1) of

the Government Code and, with the exception of the basic information, may withhold Exhibit B under section 552.108(b)(2) of the Government Code.⁵

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. 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.⁶ *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 the remaining information includes the requestor's date of birth. The requestor has a right of access to this information. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987). Thus, with the exception of the requestor's date of birth, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). As the individual whose cellular telephone number you marked is not an employee of the department, we find section 552.117 of the Government Code is inapplicable in this instance; therefore, the cellular telephone number you marked may not be withheld on that basis.

In summary, the department may rely on Open Records Letter No. 2016-11633 as a previous determination and withhold or release the information we marked in accordance with that ruling. The department must withhold report number 2015-025594 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department may withhold Exhibit F under section 552.108(a)(1) of the Government Code

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁶Section 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).

and, with the exception of the basic information, may withhold Exhibit B under section 552.108(b)(2) of the Government Code. With the exception of the requestor's date of birth, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. 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, 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 615351

Enc. Submitted documents

c: Requestor
(w/o enclosures)