



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 24, 2016

Ms. Andrea D. Russell
Counsel for the City of Benbrook
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2016-14373

Dear Ms. Russell:

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# 617875.

The Benbrook Police Department (the "department"), which you represent, received a request for police reports involving specified allegations and a specified address during a specified time period.¹ You state the department will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and other information pursuant to Open Records Decision No. 684 (2009).² You claim the submitted information is excepted

¹We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (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).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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. *Id.* § 552.147(b). Open Records Decision No. 684 is a previous

from disclosure under section 552.101 of the Government Code.³ 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. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in 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
- (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 incident report numbers 1500000315, 1500003206, 1500004690, 1500007116, 1500007290, 1500009117, 1500009358, 1500009568, 1500010662, 1500020108, 1500020187, 1500020455, 1500021710, 1500023092, 1500023235, 1500024139, 1500025833, 1500027177, 1600000513, 1600001060, 1600001129, 1600002529, 1600004254, 1600004465, 1600006334, and 1600007324 were used or developed in investigations by the department of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. We have no indication the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude incident report numbers 1500000315, 1500003206, 1500004690, 1500007116, 1500007290, 1500009117, 1500009358, 1500009568, 1500010662, 1500020108, 1500020187, 1500020455, 1500021710, 1500023092,

determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

³We note the department did not comply with section 552.301 of the Government Code in requesting this decision. *See Gov’t Code* § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

1500023235, 1500024139, 1500025833, 1500027177, 1600000513, 1600001060, 1600001129, 1600002529, 1600004254, 1600004465, 1600006334, and 1600007324 are confidential pursuant to section 261.201 of the Family Code, and the department must withhold this information under section 552.101 of the Government Code.⁴ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Section 58.007 provides, in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), a “child” is a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Upon review, we agree incident report numbers 1500006864, 1500020905, and 1600002235 involve juveniles engaged in delinquent conduct on or after September 1, 1997. It does not appear that any of the exceptions to confidentiality under section 58.007 of the Family Code apply to this information. Thus, incident report numbers 1500006864, 1500020905, and 1600002235 are confidential under section 58.007(c) of the Family Code, and the department must withhold this information under section 552.101 of the Government Code.⁵ However, we find incident

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

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

report numbers 1500010324, 1500023284, 1600000586, and 1600007129 do not identify a suspect or offender who is ten years of age or older and under seventeen years of age. As such, section 58.007 is not applicable and the department may not withhold incident report numbers 1500010324, 1500023284, 1600000586, and 1600007129 under section 552.101 on this basis.

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.⁶ *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, the department must withhold the dates of birth of public citizens in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

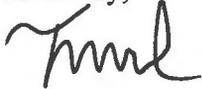
In summary, the department must withhold: (1) incident report numbers 1500000315, 1500003206, 1500004690, 1500007116, 1500007290, 1500009117, 1500009358, 1500009568, 1500010662, 1500020108, 1500020187, 1500020455, 1500021710, 1500023092, 1500023235, 1500024139, 1500025833, 1500027177, 1600000513, 1600001060, 1600001129, 1600002529, 1600004254, 1600004465, 1600006334, and 1600007324 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) incident report numbers 1500006864, 1500020905, and 1600002235 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; and (3) the dates of birth of public citizens in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

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.

⁶Section 552.102(a) exempts 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).

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 "Tim Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/bw

Ref: ID# 617875

Enc. Submitted documents

c: Requestor
(w/o enclosures)