



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 8, 2016

Ms. Captoria Brown
Paralegal
Office of the City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2016-17796

Dear Ms. Brown:

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# 621601 (City ID: 7591).

The City of Carrollton (the "city") received a request for information pertaining to the requestor. You state you have released some of the information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code.¹ We have considered the exceptions 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, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹While the city does not raise sections 552.130 and 552.137 in its brief to this office, we understand the city to raise these exceptions on the basis of its markings.

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). A portion of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information at issue is within the scope of section 261.201 of the Family Code. Because you do not indicate the city has adopted a rule governing the release of this type of information, we assume no such regulation exists. Given that assumption, the information at issue, which we marked, is confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² However, 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 section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). Section 58.007 provides, in relevant part, the following:

(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;

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(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.

Id. For purposes of section 58.007(c), a “child” means a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *Id.* § 51.02(2). Upon review, we find the information we marked involves alleged delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Thus, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.³ However, we find the city has not demonstrated the applicability of section 58.007(c) of the Family Code to the remaining information at issue. Thus, the city may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 58.007(c) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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.⁴ *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals

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

⁴Section 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).

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 it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing and of no legitimate public interest and thus, none of it may be withheld under section 552.101 of the Government Code on that basis.

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. Accordingly, the city must withhold the motor vehicle record information it has marked, and we have marked, under section 552.130 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). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses you have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to public disclosure.

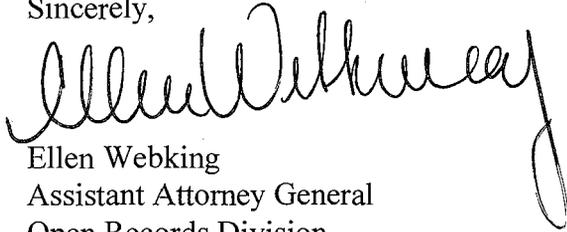
In summary, the city must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (3) the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (4) the motor vehicle record information you have marked, and we have marked, under section 552.130 of the Government Code; and (5) the personal e-mail addresses you have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to public disclosure. The city must release the remaining information.⁵

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.

⁵We note the requestor has a right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4(1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.

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 "Ellen Webking". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 621601

Enc. Submitted documents

c: Requestor
(w/o enclosures)