



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2016

Ms. Ana Vieira Ayala
Senior Attorney & Public Information Coordinator
The University of Texas System
Office of General Counsel
201 West Seventh Street, Suite 600
Austin, Texas 78701-2901

OR2016-19897

Dear Ms. Ayala:

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# 625118 (OGC No. 170279).

The University of Texas at Arlington (the "university") received a request for two specified police reports. You state the university will release some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. 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. This section encompasses information confidential under 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.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . 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). Upon review, we find the submitted information was used or developed in investigations of alleged or suspected child abuse or neglect by the university's police department. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" 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). We note the requestor is the parent of the child victim at issue. However, in report number 2016-00772 the named individual is alleged to have committed the alleged child abuse or neglect. Thus, the requestor does not have a right of access to the report at issue under section 261.201(k). *Id.* § 261.201(k). Therefore, the university must withhold report number 2016-00772 under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code.¹ However, the requestor is not accused of committing the alleged child abuse in report number 2016-00681.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Therefore, the university may not withhold report number 2016-00681 from the requestor on the basis of section 261.201(a) of the Family Code. *See id.* Section 261.201(1)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Therefore, we will consider your remaining arguments for report number 2016-00681.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *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. We note the information at issue includes the requestor's daughter's date of birth. The requestor has a right of access to this information. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Upon review, the university must withhold the public citizens' 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 addresses at issue are not excluded by subsection (c). Therefore, the university must withhold the personal e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

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).

In summary, the university must withhold report number 2016-00772 under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code. In releasing report number 2016-00681, the university must withhold the public citizens' dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the personal e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.³

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 625118

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a special right of access to the information being released pursuant to section 261.201(k) of the Family Code. Accordingly, if the university receives another request for this information from a different requestor, then the university should again seek a decision from this office.