



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2015

Ms. Mary Ann Powell
Counsel for the City of Humble
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2015-19185

Dear Ms. Powell:

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# 579197 (Ref# COHM15-015).

The City of Humble (the "city"), which you represent, received a request for a specified investigation. We note the city is redacting motor vehicle record information under section 552.130(c) of the Government Code.¹ 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. This section encompasses information protected by other statutes. Section 261.201 of the Family Code 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

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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).

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;

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law[.]

Fam. Code § 261.201(a), (l)(1)-(2); *see* Act of May 29, 2015, 84th Leg. R.S., ch. 734 § 82, 2015 Tex. Sess. Law Serv. 2218, 2244 (Vernon) (to be codified as an amendment to § 261.201(k)). The submitted information consists of an investigation of alleged or suspected child abuse or neglect made to the city's police department. *See* Fam. Code

§§ 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 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. We note, and you acknowledge, the requestor is a parent of one of the child victims listed in the information, and she is not alleged to have committed the abuse or neglect. Thus, pursuant to section 261.201(k), the information at issue may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(1) states any personally identifiable information about a victim or witness who is under 18 years of age and is not the child of the parent, managing conservator, or other legal representative requesting the information shall be withheld from disclosure. *Id.* § 261.201(l)(1). Accordingly, we find the city must withhold the identities of the victims or witnesses listed in the submitted report who are under 18 years of age and are not the children of the requestor, which we have indicated, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code.

You have also submitted video recordings from the investigation. Upon review, we find the some of the submitted video recordings contain identifying information of child victims and witnesses who are not the requestor’s children. You state the city does not have the technological capability to redact information from the submitted video recordings. Accordingly, the city must withhold the video recordings we have indicated in their entirety under section 552.101 of the Government Code in conjunction with subsection 261.201(l)(1). The remaining video recordings do not identify child victims and witnesses and may not withheld under section 261.201(l)(1) of the Family Code. However, subsection 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address the applicability of the Act to the remaining 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*

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).

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 city must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code.³

We note one of the remaining video recordings contains a public citizen's date of birth that is subject to section 552.101. You inform us the city lacks the technical capability to redact the information from the video recording. Based on this representation, we agree the city must withhold the video recording at issue, which we have indicted, in its entirety under section 552.101 of the Government Code.

We further note the submitted audio recording also contains a date of birth. The separate audio recording is not intertwined with a video recording. As previously noted, you state the city does not have the technological capability to redact information from the submitted recordings. However, because the city had the capability to copy the separate audio recording in order to submit the requested information for our review, we believe the city has the capacity to produce a copy of only the non-confidential portions of the audio recording. Therefore, the city may not withhold the separate audio recording in its entirety. Nevertheless, the city must withhold the date of birth in the audio recording under section 552.101 of the Government Code in conjunction with common-law privacy.

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.⁴ See Gov't Code § 552.130(a). One of the remaining video recordings contains motor vehicle record information that is subject to section 552.130. As noted previously, you state the city lacks the technical capability to redact information from the video recording. Based on this representation, we agree the city must withhold the video recording at issue, which we have indicted, in its entirety under section 552.130 of the Government Code.

In summary, the city must withhold the identifying information of the victims and witnesses who are under 18 years of age and are not the children of the requestor that we have indicated

³We note the requestor has a right of access to her own birth date and the birth date of her minor child. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

in the submitted report under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. The city also must withhold the video recordings we have indicated under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. The city must withhold the public citizens' dates of birth in the submitted report under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the video recording we have indicated, as well as the portion of the audio recording we have indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the video recording we have indicated under 552.130 of the Government Code. The city must release the remaining submitted information to this requestor.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.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 579197

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the information being released in this instance includes information that is confidential with respect to the general public. See Fam. Code, § 261.201(k). Therefore, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office.