



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2015

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2015-21441

Dear Mr. Dempsey:

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# 582862 (GCA15-0492 & GCA15-0508).

The Garland Police Department (the "department") received two requests for a specified report. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.130¹ of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-20730 (2015). In Open Records Letter No. 2015-20730, we determined the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. In this instance, however, the first requestor is the attorney for a parent of one of the child victims listed in the information and is not suspected of committing the alleged abuse and the second requestor is a step-parent of the other child victim and may be a parent, managing conservator, or other legal representative of the other child victim listed in the information, and is not alleged to have committed the abuse or neglect. Accordingly, these requestors may have a special right of

¹Although the department does not raise section 552.130 of the Government Code in its brief to this office, we understand the department to raise section 552.130 based on its markings in the submitted documents.

access to information pertaining to the child victims at issue under section 261.201(k) of the Family Code. 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 Fam. Code § 261.201 (k)). Thus, we find the circumstances have changed in regard to this information and the department may not rely on Open Records Letter No. 2015-20730 as a previous determination in this instance. *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 information is or is not excepted from disclosure).

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 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:

...

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

Fam. Code § 261.201(a), (l)(2); 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 Fam. Code § 261.201 (k)). The submitted information consists of a report of alleged or suspected child abuse or neglect. *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); Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 4, 2015 Tex. Sess. Law Serv. 4310, 4312 (to be codified as an amendment to Fam. Code § 261.001(1)); Act of May 21, 2015, 84th Leg., R.S., ch. 432, § 1, 2015 Tex. Sess. Law Serv. 1686, 1686-87 (to be codified as an amendment to Fam. Code § 261.001(4)). Accordingly, we find this information is subject to chapter 261 of the Family Code.

We note the first requestor is the attorney for a parent of one of the child victims listed in the information, and her client is not alleged to have committed the abuse or neglect. Thus, she has a right of access to the submitted information under section 261.201(k). *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 Fam. Code § 261.201(k)). We also note the second requestor is the step-parent of the other child victim listed in the submitted information, and is not alleged to have committed the abuse or neglect. Because it is not clear if the second requestor is a parent or guardian of the other victim, we must rule conditionally. If the second requestor is not a parent or guardian of the other child victim, then the department must withhold the submitted information in its entirety from this requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the second requestor is a parent or guardian of the other child victim, then he also has a right of access to the submitted information under section 261.201(k). *Id.* However, section 261.201(l)(1) states the identity of any other child victim or witness must be redacted before a governmental body releases information under section 261.201(l). *See* Fam. Code § 261.201(l)(1). Thus, the department must withhold the personally identifiable information of any victims or witnesses who are under 18 years of age and are not each requestor’s respective child, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1). Further, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). Thus we will address your other arguments against disclosure for the information at issue.

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 reasonably 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 the submitted information pertains to an active criminal investigation or prosecution. Based on your representation, 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, the department may withhold the information you have marked from the first requestor and from the second requestor if the second requestor is the parent, managing conservator, or legal representative of the child victim at issue under section 552.108(a)(1) of the Government Code.

Section 552.101 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 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, however, the common-law right to privacy is a personal right that “terminates upon the death of the person whose privacy is invaded.” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, we note a requestor has a right of

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).

access to her child's date of birth under section 552.023 of the Government Code. Gov't Code § 552.023 ("person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Upon review, we find the department must withhold all living public citizens' dates of birth under section 552.101 of the Government Code. However, if the second requestor is a parent, managing conservator, or other legal representative of the child victim at issue, the department may not withhold that child's date of birth from the second requestor.

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(a). Accordingly, the department must withhold the motor vehicle record information you marked and we have marked under section 552.130 of the Government Code.

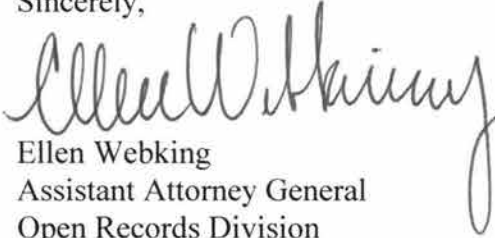
In summary, with respect to the second requestor, if the second requestor is not a parent, managing conservator, or other legal representative of the child victim, then the department must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the second requestor is a parent, managing conservator, or other legal representative of the child victim at issue, then, in this instance and with respect to the first requestor, the department: (1) must withhold the personally identifiable information of any other victims or witnesses who are under 18 years of age and are not the respective requestor's child, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(1); and (2) may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold all living public citizens' dates of birth under section 552.101 of the Government Code. However, if the second requestor is a parent, managing conservator, or other legal representative of the child victim at issue, the department may not withhold that child's date of birth from the second requestor. The department must withhold the motor vehicle record information you have marked and we have marked under section 552.130 of the Government Code. 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.

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 582862

Enc. Submitted documents

c: Requestor
(w/o enclosures)