



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 8, 2015

Mr. David V. Overcash  
Counsel for the City of Anna  
Wolfe, Tidwell & McCoy, L.L.P.  
2591 Dallas Parkway, Suite 205  
Frisco, Texas 75034

OR2015-25662

Dear Mr. Overcash:

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# 589999 (City's File No. C0029PIR20150914-01).

The Anna Police Department (the "department"), which you represent, received a request for all incident reports, allegations of criminal activity, assault reports, and service or dispatch calls made pertaining to a specified address during a specified time period. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note two of the submitted reports, which we have marked, are not responsive to the instant request because they do not pertain to incidents occurring at the address specified in the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request.

We also note some of the responsive information may have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2015-21931 (2015). We have no indication the law, facts, or circumstances on which Open Records Letter No. 2015-21931 was based have changed. Accordingly, with regard to the requested information that is identical to the information previously requested and

ruled upon by this office in the prior ruling, we conclude the department may continue to rely on Open Records Letter No. 2015-21931 as a previous determination and withhold the previously ruled upon information in accordance with that ruling. *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). To the extent the information at issue is not encompassed by the previous ruling, we will address the arguments against its release.

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 made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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). You state case number 15-000234 was used or developed in an investigation by the department of suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Thus, case number 15-000234 is within the scope of section 261.201(a). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Accordingly, the department must withhold case number 15-000234 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>1</sup>

Section 552.101 also encompasses information protected by other statutes, such as laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the

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<sup>1</sup>As our ruling is dispositive, we need not address the department’s remaining arguments against disclosure of this information.

National Crime Information Center (the “NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. See 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). See generally Gov’t Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. See generally *id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find the department must withhold the FBI number it marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

The department asserts the dates of birth it marked in the remaining responsive information are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. 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.<sup>2</sup> *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*

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<sup>2</sup>Section 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).

*Dallas*, 2015 WL 3394061, at \*3. Thus, the department must withhold the public citizens' dates of birth it marked in the remaining responsive information 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. *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information it marked in the remaining responsive information under section 552.130 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure.<sup>3</sup> *Id.* § 552.147(a). Accordingly, the department may withhold the social security numbers it marked in the remaining information under section 552.147 of the Government Code.

In summary, to the extent the responsive information was at issue in Open Records Letter No. 2015-21931, the department may continue to rely on Open Records Letter No. 2015-21931 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. Otherwise, the department must withhold case number 15-000234 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the FBI number it marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the public citizens' dates of birth it marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information it marked in the remaining information under section 552.130 of the Government Code. The department may withhold the social security numbers it marked in the remaining information under section 552.147 of the Government Code. The remaining responsive information must be released.

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/>

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<sup>3</sup>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 under the Act. *See* Gov't Code § 552.147(b).

[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 that reads "Cole Hutchison". The signature is written in a cursive style with a large initial "C".

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 589999

Enc. Submitted documents

c: Requestor  
(w/o enclosures)