



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 22, 2016

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Unity
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2016-01652

Dear Ms. McClellan:

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# 594978 (DPD Request No. 2015-15526).

The Dallas Police Department (the "department") received a request for a homicide victim roster. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, and 552.117 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 made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides, in relevant part:

(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 the marked information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261); *see also 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 disabilities of minority removed for general purposes). Accordingly, we find this information falls within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.102(a) of the Government Code 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). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W3d 336 (Tex. 2010). Upon review, we find the department may not withhold the date of birth you have marked under section 552.102(a) of the Government Code because the department does not hold the submitted information in an employment context.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of enumerated individuals who request this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a). We note section 552.117 applies only to information held by a governmental body in an employment context. Thus, information that is not held in an employment context may not be withheld under section 552.117. Upon review, we find the department does not hold the remaining information you have marked in an employment context. Thus, the information at issue may not be withheld under section 552.117 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.¹ *Id.* § 552.1175(b). Section 552.1175 applies, in part, to “peace officers as defined by Article 2,12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Some of the remaining information pertains to a deceased peace officer that is not held by the department in an employment capacity. We note the protection afforded by section 552.1175 generally does not lapse at death, as it is intended to protect the privacy of both the individual and the individual’s family members. However, because the protections of dates of birth and social security numbers under section 552.1175 are intended solely to protect the privacy of the individual, those protections lapse at death. *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 Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 6521 (1977)); 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 (1981) (“the right of privacy is personal and lapses upon death”). Accordingly, the department must withhold the information we marked under section 552.1175 of the Government Code if the peace officer elected to restrict access to his information in accordance with section 552.1175(b). If the individual did not elect to restrict access to his information in accordance with section 552.1175(b), then the department may not withhold the marked information under section 552.1175.

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the peace officer elected to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we marked under section 552.1175 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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 that reads "Britni Ramirez". The signature is written in a cursive, slightly slanted style.

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 594978

Enc. Submitted documents

c: Requestor
(w/o enclosures)