



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 6, 2016

Mr. Stephen D. Gates  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2016-07714

Dear Mr. Gates:

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# 604813 (Midland ORR# 18639).

The Midland Police Department (the "department") received a request for all records pertaining to three named individuals. 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.

Initially, we note you have not submitted any records pertaining to one of the named individuals. Thus, to the extent any information responsive to this portion of the request existed and was maintained by the department when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to

the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. A compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The request seeks unspecified records pertaining to the named individuals. Thus, we find the request requires the department to compile the named individuals' criminal histories. However, we note the requestor has provided a signed authorization from the named individuals for release of the information at issue. Thus, the requestor has a special right of access under section 552.023 of the Government Code to information pertaining to the named individuals that would otherwise be withheld to protect their privacy in a compilation of their criminal histories. *See Gov't Code § 552.023(a)* (“[a] person or a 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). Accordingly, the department may not withhold any of the submitted information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). Report numbers 100806046, 110119022, 140202050, and 160108048 were used or developed in investigations under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 of Family Code). Accordingly, we find this information is generally confidential under section 261.201(a) of the Family Code. The requestor is a representative of the Family Court Services Division of the Dallas County Domestic Relations Office (the “domestic relations office”), and she has provided an authorized release from one of the parents of the child victims at issue. However, this parent was suspected of committing the alleged or suspected abuse or neglect in report number 140202050. Therefore, we determine the requestor does not have a right of access to this report under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must generally withhold this report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

However, section 261.201 of the Family Code provides that information encompassed by section 261.201(a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1285(a) of the Government Code provides in part that “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (the “DPS”)]

criminal history record information (“CHRI”) that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code, or a person involved in a child custody evaluation under Chapter 107, Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation.” Gov’t Code § 411.1285(a); *see* Fam. Code chs. 203 (governing administration of domestic relations offices), 107 (governing child custody evaluations). Additionally, section 411.087 of the Government Code provides, in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS] [CHRI] maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Gov’t Code § 411.087(a)(2). 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.” *Id.* § 411.082(2). Thus, a domestic relations office may only receive CHRI if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, or a person involved in a child custody evaluation under chapter 107 of the Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI).

The request reveals the requestor represents a domestic relations office, and the requestor states she has been ordered by the Dallas County Family District Court to complete a social study involving the individuals named in the request. Therefore, if the department determines report number 140202050 relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or relates to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the domestic relations office has been appointed to conduct the child custody evaluation, then the department must make CHRI from report number 140202050 available to the requestor if release of the information is consistent with the Family Code and must withhold the remainder of report number 140202050 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Fam. Code § 107.103 (court ordered child custody evaluation must be performed by individual qualified under Fam. Code § 107.104); *see also id.* § 107.104(b)(3) (individual employed by or under contract with domestic relations office is qualified to conduct child

custody evaluation). However, if the department determines report number 140202050 is not related to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, report number 140202050 is not related to a person involved in a child custody evaluation under Chapter 107 of the Family Code in which the domestic relations office has been appointed to conduct the child custody evaluation, or disclosure of the information at issue is not consistent with the Family Code, then the department must withhold report number 140202050 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); *see also* Open Records Decision No. 440 at 2 (1986); Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986).

Additionally, we note this parent is not alleged to have committed the alleged or suspected abuse in report numbers 100806046, 110119022 and 160108048. *See* Fam. Code § 261.201(k). Thus, these reports may not be withheld from this requestor on the basis of section 261.201(a). *Id.* However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Therefore, the department must withhold the identity of the reporting party in report numbers 100806046 and 110119022 under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. In addition, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider whether the remaining information is otherwise excepted under the Act.

As noted above, section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found.* 540 S.W.2d at 685. 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>1</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

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<sup>1</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).

pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Thus, with the exception of the dates of birth of the named individuals and the first named individual's children, the department must withhold all public citizens' dates of birth 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 or 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.<sup>2</sup> Gov't Code § 552.130(a). As noted above, the requestor has a right of access to the named individuals' information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. However, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the department determines report number 140202050 either relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or relates to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the domestic relations office has been appointed to conduct the child custody evaluation, then the department must make CHRI from report number 140202050 available to the requestor if release of the information is consistent with the Family Code and must withhold the remainder of report number 140202050 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines report number 140202050 is not related to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, report number 140202050 is not related to a person involved in a child custody evaluation under Chapter 107 of the Family Code in which the domestic relations office has been appointed to conduct the child custody evaluation, or disclosure of the information at issue is not consistent with the Family Code, then the department must withhold report number 140202050 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the identity of the reporting parties in report numbers 100806046 and 110119022 under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. With the exception of the dates of birth of the named individuals and the first named individual's children, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common law privacy. The department must withhold the motor vehicle record information we have marked under

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<sup>2</sup>The 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).

section 552.130 of the Government Code. The department must release the remaining information.<sup>3</sup>

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](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,



Joseph Keeney  
Assistant Attorney General  
Open Records Division

JDK/dls

Ref: ID# 604813

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). However, the requestor has a right of access to the named individuals' social security numbers. *See id.* § 552.023(a); ORD 481 at 4. We also note the requestor has a special right of access to some of the information being released in this instance. *See* Fam. Code § 261.201(k); Gov't Code § 411.1285(a). If the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.