



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 21, 2016

Ms. Susan DeMeo
Legal Assistant
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2016-21286

Dear Ms. DeMeo:

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# 627964 (Georgetown Reference No. G002627-070616).

The Georgetown Police Department (the "department") received a request for information pertaining to two specified incidents. 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. Section 552.101 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 [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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The department contends the submitted information is confidential under section 261.201. However, we find the department has failed to demonstrate the submitted information involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 or the 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 chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 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). Therefore, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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.¹ *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. However, we note the information at issue includes the requestor’s date of birth and the date of birth of the requestor’s child. The requestor has a right of access to this information. *See* Gov’t Code § 552.023 (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Upon review, except for the requestor’s date of birth and his child’s date of birth,

¹Section 552.102(a) exempts 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 department must withhold the submitted 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 excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country.² See Gov't Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, except for the requestor's date of birth and his child's date of birth, the department must withhold the submitted 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 section 552.130 of the Government Code. The department must release the remaining information.³

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481, 480 (1987), 470 (1987).

³We note the information being released in this instance includes information that is confidential with respect to the general public. See Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 627964

Enc. Submitted documents

c: Requestor
(w/o enclosures)