



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2016

Mr. Ryan D. Pittman
Counsel for the City of Frisco
Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75069

OR2016-22446

Dear Mr. Pittman:

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# 629310.

The City of Frisco (the "city"), which you represent, received a request for all information related to dog bite incidents involving a named individual's dog. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor only seeks information related to dog bite incidents involving a named individual's dog. We note the submitted information contains information beyond this information. Accordingly, the submitted information that does not relate to dog bite incidents involving a named individual's dog, which we have marked, is not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the city is not required to release such information in response to this request.

¹Although you also raise section 552.023 of the Government Code, we note section 552.023 is not an exception to disclosure under the Act. *See* Gov't Code § 552.023 (person has right of access to information about self that is protected by laws protecting person's privacy interest).

Section 552.101 of the Government Code excepts from public 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 made confidential by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides, in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You seek to withhold some of the submitted information under section 58.007(c) of the Family Code. Upon review, however, we find this information does not identify a juvenile suspect or offender for purposes of section 58.007. Accordingly, we conclude you have not demonstrated the applicability of section 58.007(c) to the submitted information. Thus, the city may not withhold this information under section 552.101 in conjunction with section 58.007(c).

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family 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, 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.

Id. § 261.201(a); *see id.* §§ 101.003 (defining child for purposes of Family Code title 5), 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261). We note the city’s animal control office is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). Upon review, we find the city has failed to demonstrate the submitted information involves a report of alleged or suspected child abuse or neglect; nor does the information reveal the identity of an individual who made a report of suspected abuse or neglect of a child for the purposes of section 261.201(a)(1). Furthermore, we find you have failed to establish the information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Therefore, the city 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, 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Further, 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

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).

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 the requestor has a right of access to his client's private information, as well as the private information of the client's minor child. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing and of no legitimate public interest and thus, none of it may be withheld under section 552.101 on that basis.

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). The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, the remaining information does not contain motor vehicle record information. Therefore, the city may not withhold the remaining information under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, or an e-mail address a governmental entity maintains for one of its officials or employees. *See id.* § 552.137(c). Upon review, we find the e-mail address we have marked is generally confidential under section 552.137 of the Government Code. We note, however, the requestor's client is the spouse of the individual whose e-mail address is at issue, and may be acting as his authorized representative. Therefore, the requestor may have a right of access to his client's spouse's e-mail address pursuant to section 552.137(b) of the Government Code. *See id.* § 552.137(b). Accordingly, if the requestor's client is her spouse's authorized representative, then the requestor's client has a right of access to her spouse's e-mail address, and that information may not be withheld from this requestor under section 552.137 of the Government Code. If the requestor's client is not her spouse's authorized representative, then the city must withhold her spouse's e-mail address under section 552.137 of the Government Code. Further, we find the remaining information does not consist of e-mail addresses for purposes of section 552.137, and the city may not withhold it on that basis.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. To the extent the requestor's client is not her spouse's authorized representative, then the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner consents to its public disclosure. The remaining responsive information must be released.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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

Ref: ID# 629310

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a right of access to some information being released pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the city receives another request for this information from a different requestor, then the city should again seek a ruling from this office.