



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 7, 2016

Ms. Delietrice Henry
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2016-22611

Dear Ms. Henry:

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# 629877 (ORR# MARV072316).

The Plano Police Department (the "department") received a request for information regarding a specified incident involving named individuals on a specified date. You state the department has released some information. 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 redacted portions of the submitted information, but have not explained why or by what authority you have redacted this information. Some of the redacted information includes motor vehicle record information. We understand you have redacted this information under section 552.130 of the Government Code.¹ However, you do not assert, nor does our review of the records indicate, you have been authorized to withhold the remaining redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, this

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the department should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(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). You state, and we agree, the submitted information consists of a report of alleged or suspected child abuse or neglect made to the department. *See 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 the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to section 261.201 of the Family Code. We note, and you acknowledge, the requestor is a parent of the child victim listed in the information, and is not alleged to have committed the abuse or neglect. Thus, pursuant to section 261.201(k), the information at issue may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(1) states any personally identifiable information about a victim or witness who is under 18 years of age and is not the child of the parent, managing conservator, or other legal representative requesting the information shall be withheld from disclosure. *Id.* § 261.201(l)(1). Further, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(l)(3). Accordingly, we find the department must withhold the personally identifiable information about victims or witnesses who are under 18 years of age and are not the child of the requestor, and the identifying information of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with subsections 261.201(l)(1) and 261.201(l)(3) of the Family Code. Moreover, 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 the applicability of other exceptions to disclosure of the remaining information.

We note the remaining information contains public citizens’ dates of birth, which are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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.² *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 Dallas*, 2015 WL 3394061, at *3. We note some of the dates of birth pertain to individuals who have been de-identified and, thus, whose privacy interests are protected. Therefore, the department must withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.³ 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. Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) and section 261.201(l)(3) of the Family Code, the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy, and the motor vehicle record information we marked under section 552.130 of the Government Code. The remaining information must be released.⁴

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).

³The 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).

⁴We note the requestor has a right of access beyond that of the general public to the information being released. *See* Fam. Code § 261.201(k); 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).

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 629877

Enc. Submitted documents

c: Requestor
(w/o enclosures)