



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 31, 2016

Ms. Jessika J. Velasquez  
Counsel for the City of Watauga  
Evans, Daniel, Moore, Evans & Biggs  
115 West Second Street, Suite 202  
Fort Worth, Texas 76102

OR2016-24185

Dear Ms. Velasquez:

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# 632461 (PIR No. 16-390).

The Watauga Police Department (the "department"), which you represent, received a request for "all calls cleared MMR" during a specified time period. 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 representative sample of information.<sup>1</sup>

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 of the Government Code encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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). Upon review, we find incident report number 16W22310 consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation of an alleged or suspected child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 of the Family Code), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Therefore, incident report number 16W22310 is within the scope of section 261.201. You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, incident report number 16W22310 is confidential under section 261.201(a) of the Family Code, and the department must withhold it under section 552.101 of the Government 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual’s privacy.

Additionally, 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. *Indus. Found.*, 540 S.W.2d 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>2</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 pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3.

Upon review, we find you have not demonstrated, and the remaining information does not reflect, this is a situation in which the remaining information must be withheld in its entirety to protect certain individuals' privacy interests. However, we find some of the remaining information, which we have marked, meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note some of the information at issue pertains to individuals who have been de-identified and whose privacy interests are, thus, protected. Accordingly, the department must withhold the information we have marked, as well as all identifiable public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. We find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 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. Accordingly, the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold incident report number 16W22310 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the information we have marked, as well as all identifiable public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the driver's license information we marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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<sup>2</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).

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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/akg

Ref: ID# 632461

Enc. Submitted documents

c: Requestor  
(w/o enclosures)