



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 2, 2016

Ms. Jo Ann Pate  
Assistant City Attorney  
Office of the City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2016-26792

Dear Ms. Pate:

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# 636126 (Request No. W055083-090916).

The City of Fort Worth (the "city") received a request for all information pertaining to a specified arrest involving a named individual. You state you have released some information to the requestor. 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. This section 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). Upon review, we find the information we have indicated was used or developed in an investigation of alleged or suspected child abuse; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). As the city’s police department does not indicate it has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude the information we have indicated is confidential pursuant to section 261.201 of the Family Code, and the city must withhold it under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*<sup>1</sup> However, we find you have not demonstrated the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established the remaining information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). Therefore, the city may not withhold the remaining 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. 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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of the information at issue.

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. This office has also found a compilation of an individual's criminal history 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. We note active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system).

The city asserts the present request is for unspecified law enforcement records involving the named individual. We note, however, the requestor only seeks information pertaining to a specified incident. Thus, we find the remaining information is not considered to be part of a compilation of criminal history. Accordingly, no portion of the information at issue may be withheld under section 552.101 in conjunction with common-law privacy as a compilation of criminal history. However, upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold all public citizens' dates of birth, in addition to the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, as the city has failed to demonstrate any portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 414.009 of the Government Code, which provides:

- (a) A person who is a member or employee of the [Texas Crime Stoppers Council] or who accepts a report of criminal activity on behalf of a crime stoppers organization commits an offense if the person intentionally or knowingly divulges to a person not employed by a law enforcement agency

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<sup>2</sup>Section 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 content of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report.

Gov't Code § 414.009(a). You state the information you have indicated consists of information submitted to a crime stoppers organization. *See id.* § 414.001(2)(B) (defining "crime stoppers organization" as public organization operated on local or statewide level, that pays rewards to persons who report to organization information about criminal activity, and that forwards information to appropriate law enforcement agency). However, upon review, we find the city has failed to establish any of the remaining information reveals either the content of a crime stopper's report or the identity of a person who made a crime stopper's report. *See id.* Thus, the city has not demonstrated the remaining information is confidential under section 414.009(a), and may not withhold it under section 552.101 on that ground.

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.<sup>3</sup> *See id.* § 552.130(a). The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold all public citizens' dates of birth, in addition to 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. The city must release the remaining information.<sup>4</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

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<sup>3</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470(1987).

<sup>4</sup>The remaining information contains a social security number. Section 552.147 of the Government Code authorizes a governmental body to redact the social security number of a living person without requesting a decision from this office. *See* Gov't Code § 552.147(b).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Kavid Singh". The signature is written in a cursive style with a large initial 'K'.

Kavid Singh  
Assistant Attorney General  
Open Records Division

KVS/bhf

Ref: ID# 636126

Enc. Submitted documents

c: Requestor  
(w/o enclosures)