



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2017

Ms. Stacie S. White
Counsel for Town of Flower Mound
Taylor, Olson, Adkins, Sralla, Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2017-00639

Dear Ms. White:

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# 640972.

The Town of Flower Mound (the "town"), which you represent, received a request from the first requestor for information pertaining to her children and a named individual and a request from the second requestor for a specified report. You state the town will redact some information pursuant to section 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or

¹ Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

after September 1, 1997. *See* Fam. Code § 58.007(c). Section 58.007 provides, in relevant part, the following:

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j)(1)-(2). Upon review, we find the submitted information involves alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (for purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age when the conduct occurred), .03(a), (b) (defining "delinquent conduct" and "conduct

indicating a need for supervision”). Therefore, the information at issue is generally confidential under section 58.007(c) of the Family Code. However, we note the requestors are parents of one of the juvenile offenders at issue. Therefore, the requestors have a right to inspect information concerning their child under section 58.007(e), and it may not be withheld from them under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *Id.* § 58.007(e). However, section 58.007(j)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor’s child must be redacted. *See id.* § 58.007(j)(1). Thus, the town must withhold the personally identifiable information of the juveniles who are not the requestors’ child, which we have marked and indicated, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.² Furthermore, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will address your remaining arguments against disclosure with respect to the remaining information.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part, the following:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . 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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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.

(1) 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:

....
(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Id. § 261.201(a), (k), (1)(2). Upon review, we find the submitted information pertains to an investigation of alleged or suspected child abuse or neglect and falls within the scope of section 261.201 of the Family Code. *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). Thus, we find the submitted information is generally confidential under section 261.201 of the Family Code. As noted above, the requestors are the parents of one of the child victims. However, the second requestor is alleged to have committed the alleged abuse or neglect. Thus, the second requestor does not have a right of access to the submitted information under section 261.201(k). *Id.* § 261.201(k). Accordingly, the town must withhold the submitted information from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³

The first requestor, however, is not alleged to have committed the suspected abuse or neglect. Therefore, the submitted information may not be withheld from the first requestor under section 261.201(a). *See id.* However, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure; thus, we will address your remaining arguments against disclosure of this information. *Id.* § 261.201(1)(2).

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. In considering whether a public citizen’s date of birth is private, the

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information with respect to the second requestor.

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.⁴ *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. We note the requestor has a right of access to her own and her minor child's dates of birth pursuant to section 552.023 of the Government Code and they may not be withheld from her on the basis of common-law privacy. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In addition, some of the remaining information and dates of birth belong to individuals who have been de-identified and whose privacy interests are, thus, protected. Accordingly, with the exception of the first requestor's and her child's dates of birth, the town must withhold all identifiable public citizens' dates of birth under section 552.101 on the basis of common-law privacy.

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. You state the town will withhold motor vehicle record information from the submitted documents pursuant to section 552.130(c) of the Government Code.⁵ The town must also withhold any discernible and audible motor vehicle record information within the submitted video recordings under section 552.130 of the Government Code.

In summary, the town must withhold the personally identifiable information of the juveniles who are not the requestors' child, which we have marked and indicated, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The town must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the first requestor's and her child's dates of birth, the town must withhold all identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

⁴Section 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).

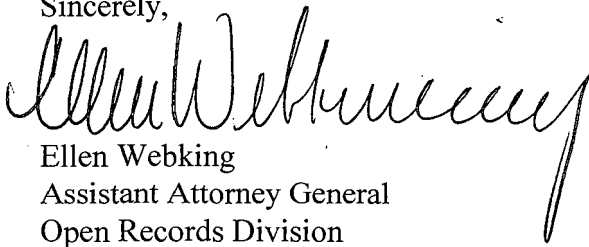
⁵Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

The town must also withhold any discernible and audible motor vehicle record information within the submitted video recordings under section 552.130 of the Government Code. The town must release the remaining information to the first requestor.⁶

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 640972

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

⁶We note the first requestor has a special right of access to the information being released in this instance. *See* Fam. Code §§ 261.201(k), 58.007(e); *see also* Gov't Code § 552.023(a); ORD 481 at 4. If the town receives another request for this information from a different requestor, the town must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).