



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 9, 2017

Mr. Gregory L. Grigg
Chief of Police
Deer Park Police Department
2911 Center Street
Deer Park, Texas 77536-4942

OR2017-03010

Dear Chief Grigg:

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# 645050 (PIR Nos. 3595 and 3596).

The Deer Park Police Department (the "department") received two requests from the same requestor for all reports involving the requestor's client and a named individual, and all photographs, reports, field notes, and videos that pertain to the requestor's client, the same named individual, and a named officer between September 1, 2016, and November 11, 2016. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code for the submitted information that does not depict either of the other named individuals as a suspect, arrestee, or criminal defendant. Section 552.301(b) of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). You state the department received the instant request for information on November 11, 2016. You also state the department was closed on November 24, 2016, and November 25, 2016. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under

the Act. Accordingly, the department's ten-business-day deadline was November 29, 2016. While you timely raised sections 552.101, 552.1175, and 552.130 of the Government Code within the ten-business-day time period as required by section 552.301(b), you did not raise section 552.108 of the Government Code until after the ten-business-day deadline had passed. Consequently, we find the department failed to comply with section 552.301 of the Government Code in raising section 552.108 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although the department seeks to withhold some of the submitted information under section 552.108 of the Government Code, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the need of a governmental body, other than the one that failed to timely seek an open records decision, to withhold information under section 552.108 can provide a compelling reason under section 552.302. Open Records Decision No. 586 (1991). You assert, and provide documentation supporting, the Harris County District Attorney's Office (the "district attorney's office") has a law enforcement interest in report number 16-04395 and event number 2016-434730. Therefore, we will consider whether the department may withhold the information at issue in report number 16-04395 and event number 2016-434730 on behalf of the district attorney's office under section 552.108. We will also consider your timely-raised exceptions to disclosure for the remaining 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 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. This office has 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. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in

courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

We note the present request requires the department to compile unspecified law enforcement records concerning the named individuals who are not the requestor's client. Thus, we find the request generally implicates these individuals' rights to privacy. However, we note the requestor also asks for information held by the department involving the requestor's client. This part of the request seeks specified records involving the requestor's client. Therefore, information involving the requestor's client may not be withheld as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Accordingly, with the exception of the information involving the requestor's client, to the extent the department maintains unspecified law enforcement records depicting the other named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 in conjunction with common-law privacy. We note you have submitted information that does not depict either of the other named individuals as a suspect, arrestee, or criminal defendant. Thus, this information is not part of a criminal history compilation protected by common-law privacy and may not be withheld under section 552.101 on that basis. Therefore, we will address your arguments against the disclosure of the information at issue.

Section 552.101 of the Government Code also encompasses information made confidential by section 261.201 of the Family Code, which provides, in relevant part, as follows:

(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, 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:

...

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

Fam. Code § 261.201(a), (k), (l)(2). Report numbers 11-01872, 14-00774, 14-01849, and 16-04456, event numbers 2011-107888, 2014-053133, and 2016-441189, and the information we have marked in report numbers 15-04300 and 16-00162 consist of information used or developed in investigations of alleged or suspected abuse or neglect under chapter 261 of the Family Code. Accordingly, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for the purposes of this section as a 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 Family Code chapter 261). Accordingly, we find this information subject to chapter 261 of the Family Code. We note the requestor’s client is the parent of the child victim listed in report number 16-04456 and event number 2016-441189. However, we note the requestor’s client is alleged to have committed the suspected abuse or neglect in report number 16-04456 and event number 2016-441189. Thus, the requestor does not have a right of access to report number 16-04456 and event number 2016-441189 under section 261.201(k). Accordingly, the department must withhold report numbers 11-01872, 14-00774, and 16-04456, event numbers 2011-107888, 2014-053133, and 2016-441189, and the information we have marked in report numbers 15-04300 and 16-00162 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

However, we note the requestor's client is the child victim in report number 14-01849 and the requestor's client is now an adult. Thus, pursuant to section 261.201(k), the department may not withhold report number 14-01849 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)(2) states a governmental body must redact any information that is excepted from required disclosure under the Act or other law. *See id.* § 261.201(l)(2). Accordingly, we will consider whether this information is otherwise excepted under the Act.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and submit documentation demonstrating, the district attorney’s office objects to the release of the information you marked in report number 16-04395 and event number 2016-434730 because it pertains to a pending criminal investigation or prosecution. Based on your representation and our review of the information at issue, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree section 552.108(a)(1) is applicable to the information at issue. Accordingly, the department may withhold the information you have marked in report number 16-04395 and event number 2016-434730 under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.²

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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130. We note section 552.130 protects privacy interests. Accordingly, the requestor has a right of access to his client’s motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See Gov’t Code* § 552.023(a) (person or person’s authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, with the exception of the requestor’s client’s motor vehicle record information, the

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

department must withhold the motor vehicle record information you marked and we marked and indicated under section 552.130 of the Government Code.³

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone, unless the cellular telephone is paid for by a governmental body. *See* Open Records Decision No. 506 (1988). Some of the remaining information pertains to an individual whose information may be subject to section 552.1175. Thus, except for the information we have marked for release, to the extent the information you marked and we marked and indicated pertains to an individual whose information is subject to section 552.1175(a), and the individual elects to restrict access to this information in accordance with section 552.1175(b), the department must withhold the information at issue under section 552.1175 of the Government Code; however, the personal cellular telephone number may only be withheld if the cellular telephone service is not paid for by a governmental body. If the individual whose information is at issue is not subject to section 552.1175(a) or no election is made, the department may not withhold this information under section 552.1175 of the Government Code. However, we find you have failed to demonstrate the applicability of section 552.1175 to any of the remaining information. Therefore, the department may not withhold any of the remaining information under section 552.1175.

As noted above section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d at 683. This office has found that 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. 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.⁴ *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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).

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 some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the information at issue includes the requestor's client's and the requestor's client's daughter's dates of birth. The requestor has a right of access to this information. *See* Gov't Code § 552.023; ORD 481 at 4. We also note dates of birth pertaining to individuals who have been de-identified are not protected as the de-identified individuals' privacy interests are, thus, protected. Upon review, except for the information we have marked for release and the dates of birth of de-identified individuals, the department must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the information involving the requestor's client, to the extent the department maintains unspecified law enforcement records depicting the other named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 in conjunction with common-law privacy. The department must withhold report numbers 11-01872, 14-00774, and 16-04456, event numbers 2011-107888, 2014-053133, and 2016-441189, and the information we have marked in report numbers 15-04300 and 16-00162 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department may withhold the information you have marked in report number 16-04395 and event number 2016-434730 under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. With the exception of the requestor's client's motor vehicle record information, the department must withhold the motor vehicle record information you marked and we marked and indicated under section 552.130 of the Government Code. Except for the information we have marked for release, to the extent the information you marked and we marked and indicated pertains to an individual whose information is subject to section 552.1175(a), and the individual elects to restrict access to this information in accordance with section 552.1175(b), the department must withhold the information at issue under section 552.1175 of the Government Code; however, the personal cellular telephone number may only be withheld if the cellular telephone service is not paid for by a governmental body. Except for the information we have marked for release and the dates of birth of de-identified individuals, the department must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.⁵

⁵We note some of the information being released contains confidential information to which the requestor has a right of access. *See* Fam. Code § 261.201(k); Gov't Code § 552.023(a). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/som

Ref: ID# 645050

Enc. Submitted documents

c: Requestor
(w/o enclosures)