



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 13, 2017

Ms. Melisa McDonald
Assistant Supervisor Records/Warrants
McLennan County Sheriff's Office
901 Washington Avenue
Waco, Texas 76701

OR2017-03215

Dear Ms. McDonald:

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# 645588.

The McLennan County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified case number. 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 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 assert, and we agree, the submitted information was used in an investigation by the sheriff's office of alleged or suspected child abuse under chapter 261 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) (defining "abuse" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. However, we note the requestor is the parent of one of the child victims, and the requestor is not alleged to have committed the abuse.

Therefore, the sheriff's office may not withhold the submitted information from the requestor under section 261.201(a). *See id.* § 261.201(k). However, section 261.201(1)(1) states the identity of a victim or witness under eighteen years of age who is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld. *Id.* § 261.201(1)(1). Further, section 261.201(1)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 261.201(1)(1) and 261.201(1)(3) of the Family Code. *Id.* § 261.201(1)(1), (3). Additionally, we note section 261.201(1)(2) states any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(1)(2). Thus, we will consider your remaining argument against disclose of the information at issue.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides, in part, as follows:

(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 [the Act], or other law.

Id. § 58.007(c), (e), (j). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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 at the time of the conduct at issue. *See id.* § 51.02(2). You assert, and we agree, the remaining information involves a child engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. As such, this information consists of juvenile law enforcement records that are confidential pursuant to section 58.007(c). In this instance, however, the requestor is a step-parent of the named juvenile offender and, therefore, may have access to the information at issue pursuant to section 58.007(e) as the child's legal guardian. *See id.* § 58.007(e). Thus, we must rule conditionally. If the requestor is not a legal guardian of the named juvenile offender, then the sheriff's office must withhold the information at issue in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If, however, the requestor is a legal guardian of the named juvenile offender, then the sheriff's office may not withhold the information at issue from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c). *See id.* § 58.007(e). Nevertheless, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or law must be redacted. *See id.* § 58.007(j)(2).

Section 552.101 of the Government Code also 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.¹ *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. Thus, the sheriff's office must withhold the public citizen's date of birth we have marked under section 552.101 of the Government Code in conjunction with 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.² *See* Gov't Code § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not a legal guardian of the named juvenile offender, then the sheriff's office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the requestor is a legal guardian of the named juvenile offender, then the sheriff's office must (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 261.201(1)(1) and 261.201(1)(3) of the Family Code, (2) withhold the public citizen's date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (3) withhold the motor vehicle record information we have marked under section 552.130 of the Government Code, and (4) release the remaining information.

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

¹Section 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).

²The 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).

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 cursive script that reads "Cole Hutchison".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 645588

Enc. Submitted documents

c: Requestor
(w/o enclosures)