



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 29, 2017

Ms. Leann M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2017-06460

Dear Ms. Quinn:

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# 651224 (Ref. No. 17-352).

The Cedar Park Police Department (the "department") received a request for information pertaining to two named individuals. The department states it will make some of the information available to the requestor, but claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, the department informs us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-06276 (2017). In Open Records Letter No. 2017-06276, we determined the department must withhold some information under section 552.101 of the Government Code in conjunction with constitutional privacy, but must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the department must continue to rely on Open Records Letter No. 2017-06276 as a previous determination and withhold or release the identical information in accordance with that ruling.

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

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.

Id. Upon review, we find Exhibit C 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 person who is ten years of age or older and under seventeen years of age when conduct occurred), .03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). The exceptions in section 58.007 do not appear to apply. Therefore, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides as follows:

[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

¹As our ruling is dispositive, we do not address the other arguments of the department to withhold this information.

(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.

Id. § 261.201(a). The department asserts Exhibit D was used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Upon review, we find the information is within the scope of section 261.201 of the Family Code. The department states it has not adopted a rule that governs the release of this type of information. Therefore, the department must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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 the *Industrial Foundation* decision. *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). The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). Upon review, we agree the department must withhold the information it has marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. We also find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must also withhold the information 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. *See* Gov’t Code § 552.130. We note some of the remaining information that the department seeks to withhold under section 552.130 does not consist of motor vehicle record information. Accordingly, the department may not withhold this

²As our ruling is dispositive, we do not address the other arguments of the department to withhold this information.


information, which we have marked for release, under section 552.130. However, we agree the department must withhold the remaining motor vehicle record information it has marked, as well as the information we have marked, under section 552.130 of the Government Code.

To conclude, the department must continue to rely on Open Records Letter No. 2017-06276 as a previous determination and withhold or release the identical information in accordance with that ruling. The department must withhold the following: (1) Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (2) Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (3) the information marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) with the exception of the information we have marked for release, the remaining information marked under section 552.130 of the Government Code. The department must 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 651224

Enc. Submitted documents

c: Requestor
(w/o enclosures)