



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 7, 2017

Ms. Linda Hight
Records Coordinator
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033-0677

OR2017-07418

Dear Ms. Hight:

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# 652284.

The City of Cleburne (the "city") received two requests from different requestors. The first requestor seeks a specified incident report. The second requestor seeks information pertaining to two specified incidents. You state you have released some information to the second requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 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 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 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; [and]

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

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). Upon review, we find incident report number 17-00094 and call sheet report number 17-01508 were used or developed in an investigation of alleged or suspected child abuse or neglect. *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). Accordingly, the information is within the scope of section 261.201 of the Family Code. You have not indicated the city’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we

conclude the city must withhold incident report number 17-00094 in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ However, we note the second requestor is the parent of two of the child victims named in report number 17-00094 and call sheet report number 17-01508, and the parent is not alleged to have committed the abuse or neglect. Therefore, the city may not withhold report 17-00094 or call sheet report number 17-01508 from the second requestor under section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(1) states the personally identifiable information of a victim or witness who is under the age of eighteen and is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld from disclosure. *Id.* § 261.201(l)(1). Thus, the city must withhold the identifying information of any child victim that the second requestor is not a parent, managing conservator, or other legal representative of under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. Section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Accordingly, the city must withhold the identifying information of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Further, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will consider your remaining argument against disclosure.

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. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). We note the second requestor has a right of access to his date of birth and the dates of birth of his juvenile children. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Further, we note the remaining information contains the dates of birth of individuals who have been de-identified and whose privacy interests are, thus, protected. Thus, with the exception of the second requestor's and his children's dates of birth, the city must withhold all identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold incident report number 17-00094 in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with

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

section 261.201(a) of the Family Code. The city must withhold the identifying information of any child victim that the second requestor is not a parent, managing conservator, or other legal representative of under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. With the exception of the second requestor's and his children's dates of birth, the city must withhold all identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information to the second requestor.²

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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/sdk

Ref: ID# 652284

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

²We note the second requestor has a right of access to some of the information being released in this instance. See Fam. Code § 261.201(k); Gov't Code § 552.023; ORD 481 at 4.