



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 17, 2017

Ms. Elizabeth Walker  
City Secretary  
City of Weslaco  
255 South Kansas Avenue  
Weslaco, Texas 78596-6285

OR2017-08040

Dear Ms. Walker:

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# 653504.

The City of Weslaco (the "city") received a request for all police reports pertaining to a specified address during a specified time period. You state the city has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.132, 552.1325, and 552.148 of the Government Code.<sup>1</sup> 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. This section encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

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<sup>1</sup>Although you raise section 552.229 of the Government Code, we note this section is not an exception to disclosure under the Act. *See* Gov't Code § 552.229. Further, although you raise section 552.108 of the Government Code, you have not submitted arguments in support of this exception. Therefore, we assume you have withdrawn your claim section 552.108 applies to the submitted information. *See id.* §§ 552.301, .302.

(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.

Fam. Code § 261.201(a). Upon review, we find incident report numbers 2016041047 and 2017001273 were used or developed in investigations conducted under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *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 of Family Code). You have not indicated the city has adopted a rule governing 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 numbers 2016041047 and 2017001273 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>2</sup>

Section 552.1325 of the Government Code provides, in relevant part, the following:

(a) In this section:

(1) “Crime victim” means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) “Victim impact statement” means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

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

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Gov't Code § 552.1325. The definition of a victim under article 56.32 of the Code of Criminal Procedure includes an individual who suffers physical or mental harm as a result of criminally injurious conduct. Crim. Proc. Code § 56.32(a)(10), (11). Upon review, we find the information at issue does not include a victim impact statement for purposes of section 552.1325, nor has the city demonstrated any of the information at issue was submitted for purposes of preparing a victim impact statement. Accordingly, the city may not withhold any of the remaining information under section 552.1325 of the Government Code.

Section 552.132 of the Government Code provides, in relevant part, the following:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

Gov't Code § 552.132(b). The information at issue is held by the city, not the crime victim's compensation division of the attorney general's office. Therefore, section 552.132(b) is not applicable to this information. Thus, the city may not withhold any of the remaining information under section 552.132(b) of the Government Code.

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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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.). Thus, the city must withhold all public citizens' dates of birth in incident report number 2016034922 under section 552.101 of the Government Code. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public

concern, and the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, the city must withhold incident report numbers 2016041047 and 2017001273 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold all public citizens' dates of birth in incident report number 2016034922 under section 552.101 of the Government Code in conjunction with common-law privacy. The city 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](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 653504

Enc. Submitted documents

c: Requestor  
(w/o enclosures)