



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 23, 2017

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

OR2017-09676A

Dear Ms. Walker:

Our office issued Open Records Letter No. 2017-09676 (2017) on May 5, 2017. We have examined that ruling and determined that an error was made in its issuance. When this office determines an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on May 5, 2017. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")). This ruling was assigned ID# 668115.

The City of Weslaco (the "city") received a request for information pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.132, and 552.1325 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. This section 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
- (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). The city asserts the requested information was used or developed in an investigation by the city's police department under chapter 261 of the Family Code. *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 city has not established the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Therefore, the information is not confidential under section 261.201(a) of the Family Code and the city may not withhold it under section 552.101 on that ground.

Section 552.108 of the Government Code provides, in part, the following:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:
  - (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
  - (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;
  - (3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or
  - (4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). A governmental body claiming section 552.108(a)(1) or section 552.108(b)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). You do not explain how the submitted information pertains to ongoing criminal investigations or prosecutions, nor have you explained how its release would interfere with the detection, investigation, or prosecution of crime. Thus, the city has not met its burden under section 552.108(a)(1) or section 552.108(b)(1). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.108(a)(2), (b)(2). You have not demonstrated the information at issue relates to criminal investigations that have concluded in results other than convictions or deferred adjudications. Thus, the city has not met its burden under section 552.108(a)(2) or section 552.108(b)(2). Section 552.108(a)(3) is also inapplicable as the information at issue does not relate to a threat against a police officer. *See id.* § 552.108(a)(3). Finally, you do not assert the information at issue was prepared by an

attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Thus, the city has not met its burden under section 552.108(a)(4) or section 552.108(b)(3). Accordingly, the city may not withhold the submitted information under section 552.108 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.

*Id.* § 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 submitted information under section 552.132(b) of the Government Code.

Section 552.1325 of the Government Code provides 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
- (2) any other information the disclosure of which would identify or tend to identify the crime victim.

*Id.* § 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). Exhibit C includes a victim impact statement as defined by article 56.03 of the Code of Criminal Procedure. *See id.* § 56.03. The information at issue reflects the victim suffered physical harm as a result of the criminally injurious conduct. Thus, we find the individual who completed the impact statement is a victim for purposes of article 56.32, and thus is a crime victim for purposes of section 552.1325. *See id.* § 56.32(a)(2)(D). We have marked the name of the crime victim and information that otherwise identifies or tends to identify the crime victim. Accordingly, the city must withhold the information we have marked under section 552.1325 of the Government Code. However, we find you have failed to demonstrate the applicability of section 552.1325 to any of the remaining information at issue. Accordingly, the city may not withhold any of the remaining information on the basis of section 552.1325 of the Government Code.

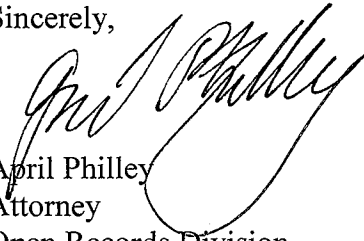
Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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.). Here, we note the requestor is the authorized representative of the named individual. Therefore, the requestor has a right of access to his client’s private information under section 552.023 of the Government Code. The information about the requestor’s client may not be withheld from the requestor under section 552.101 on that basis. *See id.* § 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). Accordingly, with the exception of the requestor’s client’s date of birth, the city must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, upon review, the city has failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. The city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the information we marked under section 552.1325 of the Government Code. The city must withhold the dates of birth of public citizens who are not the requestor’s client under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,



April Philley  
Attorney  
Open Records Division

AP/sb

Ref: ID# 668115

c: Requestor