



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2017

Ms. Stacie S. White
Counsel for Town of Flower Mound
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2017-10035

Dear Ms. White:

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# 657104.

The Town of Flower Mound (the "town") received a request for case number 17006024 and all records related to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in

courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the town to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. However, the requestor also is seeking information pertaining to a specific case. This portion of the request does not implicate the named individual's right to privacy. Accordingly, the specifically requested case may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy as a criminal history compilation. Therefore, to the extent the town maintains law enforcement records, other than the specifically requested case, depicting the named individual as a suspect, arrestee, or criminal defendant, the town must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

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

(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;

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

Fam. Code § 261.201(a), (k), (l)(1)-(2). Upon review, we find case number 17006024 was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also 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). Accordingly, we find the information is confidential under section 261.201 of the Family Code.

We note, however, the requestor is a stepparent of one of the child victims listed in the information at issue and is not alleged to have committed the alleged abuse. As such, this requestor may have a right of access to the information at issue pursuant to section 261.201(k). *See id.* § 261.201(k). Therefore, we rule conditionally. If the requestor is not a parent, managing conservator, or other legal representative of the child victim, then case number 17006024 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If, however, the requestor is a parent, managing conservator, or other legal representative of the child victim, the town may not use section 261.201(a) to withhold this information from the requestor. *See id.* However, section 261.201(l)(1) states any personally identifiable information about a victim or witness who is under eighteen years of age and is not the child of the parent, managing conservator, or other legal representative requesting the information shall be withheld from disclosure. *Id.* § 261.201(l)(1). Accordingly, the town must withhold the personally identifiable information of a child victim or witness who is not the child of the requestor under section 552.101 of the Government Code in conjunction with

section 261.201(1)(1) of the Family Code. Further, section 261.201(1)(2) provides that any information excepted from disclosure under the Act or other law must be withheld. *See id.* § 261.201(1)(2). Thus, in the event the requestor does have a right of access to the information at issue, we will address your remaining arguments against disclosure.

As noted above, 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). 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.). However, we note the requestor has a right of access to the otherwise private information of his family members, including their dates of birth, pursuant to section 552.023 of the Government Code. *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). Upon review, we find some of the information at issue, which we have marked, is protected by common-law privacy. Accordingly, the town must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

You state the town will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ Section 552.130 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 id.* § 552.130. Upon review, we find portions of the submitted information consist of motor vehicle record information. However, we note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own motor vehicle record information and that of his family members under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *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).

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

Accordingly, the town may not withhold any portion of the remaining information under section 552.130 of the Government Code.

We understand the town will redact personal e-mail addresses subject to section 552.137 of the Government Code pursuant to the previous determination in Open Records Decision No. 684 (2009).² Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, the general e-mail address of a business, an Internet website address, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address that a governmental entity maintains for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). We note the requestor has a right to his own e-mail address and the e-mail addresses of his family members under section 552.137(b). *Id.* § 552.137(b). Accordingly, the town may not withhold any portion of the remaining information under section 552.137 of the Government Code.

In summary, to the extent the town maintains law enforcement records, other than the specifically requested case, depicting the named individual as a suspect, arrestee, or criminal defendant, the town must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not a parent, managing conservator, or other legal representative of the child victim, then case number 17006024 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If, however, the requestor is a parent, managing conservator, or other legal representative of the child victim, the town must withhold the personally identifiable information of a child victim or witness who is not the child of the requestor under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The town 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.

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision. *See* ORD 684.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/nmd

Ref: ID# 657104

Enc. Submitted documents

c: Requestor
(w/o enclosures)