



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 23, 2017

Ms. Delietrice Henry
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2017-11188

Dear Ms. Henry:

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# 659149 (ORR #s JACR030917 & GRAF030917).

The Plano Police Department (the "department") received two requests from different requestors for all information pertaining to a specified address and two specified reports involving a specified address. You state you released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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 protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

¹Although you do not raise section 552.130 of the Government Code in your brief, we understand you to raise this exception based on your markings.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(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.

Fam. Code § 261.201(a), (k). A portion of the submitted information consists of a report of alleged or suspected child abuse or neglect made to the department. *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, we find this information is subject to section 261.201 of the Family Code. In this instance, the first requestor is a parent of the child victim listed in the information at issue. However, we note the first requestor is alleged to have committed the suspected abuse or neglect. Thus, the first requestor does not have a right of access to the information at issue under section 261.201(k). *See id.* § 261.201(k). Therefore, we conclude the information we marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you marked relates to closed cases that did not result in convictions or deferred adjudications. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the information you marked, and the department may withhold the marked information under section 552.108(a)(2) of the Government Code.

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, however, the first requestor has a right of access to her own date of birth under section 552.023 of the Government Code and it may not be withheld from her under section 552.101 in conjunction with common-law privacy. *See* Gov't Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the department must withhold the dates of birth we 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(a). Upon review, we find the information you marked consists of motor vehicle record information. Thus, the department must generally withhold the information you marked under section 552.130 of the Government Code. However, we note section 552.130 protects privacy interests. Thus, the first requestor may have a right of access to some of the marked motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. To the extent any of the motor vehicle record information you marked belongs to the first requestor, she has a right of access under section 552.023 to her own information, and the department may not withhold such information under section 552.130 from the first requestor. To the extent the motor vehicle record information you marked does not belong to the first requestor, the department must withhold the information you marked from the first requestor under section 552.130 of the Government Code. In either event, the

department must withhold the information you marked under section 552.130 from the second requestor.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department may withhold the information you marked under section 552.108(a)(2) of the Government Code. The department must withhold the dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must generally withhold the motor vehicle record information you marked under section 552.130 of the Government Code; however, any information belonging to the first requestor must be released to her. The department must release the remaining information.⁴

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/sb

Ref: ID# 659149

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

⁴We note the first requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.