



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2017

Ms. Jo Ann Pate
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2017-15032

Dear Ms. Pate:

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# 664966 (City PIR No. W060130).

The City of Fort Worth (the "city") received a request for certain information pertaining to a specified address during a defined time period, as well as all police reports for traffic accidents in a certain area during a defined time period.¹ You state the city will release some information. You claim the submitted information is excepted from disclosure under

¹You state the city sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Additionally, you inform us you sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the city received the required deposit on April 17, 2017. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

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. This section encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides, in relevant part, 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.

Fam. Code § 261.201(a). You state the information at issue was used or developed in an investigation by the city’s police department of alleged or suspected child abuse or neglect 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). Thus, this information is within the scope of section 261.201(a). 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 that no such regulation exists. Accordingly, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

Section 552.101 of the Government Code also encompasses information made confidential by section 143.090 of the Local Government Code, which provides as follows:

A department, [the Fire Fighters’ and Police Officers’ Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

(1) the officer has been charged with an offense by indictment or by information;

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;

(3) the photograph is introduced as evidence in a judicial proceeding;
or

(4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You inform us the city is a civil service city under chapter 143 of the Local Government Code. You state the information at issue consists of photographs depicting a police officer employed by the city's police department. You also state none of the exceptions under section 143.090 apply. Based on your representations and our review, we conclude the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 143.090 of the Local 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 Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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 within 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 you have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. The city must withhold all public citizens' dates of birth within the remaining information 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](#), 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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive style with a small "esq." at the end.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 664966

Enc. Submitted documents

c: Requestor
(w/o enclosures)