



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 11, 2017

Ms. Charla Thomas
Deputy City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2017-15404

Dear Ms. Thomas:

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# 665553.

The City of Temple (the "city") received a request for a specified report number. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the city has only submitted video recordings pertaining to the specified report. To the extent information responsive to the remainder of the request existed on the date the city received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

¹We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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, such as subchapter E of chapter 264 of the Family Code, which applies to children’s advocacy centers. Fam. Code §§ 264.401-.411. Section 264.408 of the Family Code provides, in relevant part:

(a) The files, reports, records, communications, and working papers used or developed in providing services under this chapter are confidential and not subject to public release under [the Act], and may only be disclosed for purposes consistent with this chapter. Disclosure may be to:

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state or local agencies that provide services to children and families; and

(2) the attorney for the child who is the subject of the records and a court-appointed volunteer advocate appointed for the child under Section 107.031.

Fam. Code § 264.408(a). Thus, section 264.408 provides that information used or developed in providing services under chapter 264 of the Family Code, which concerns child welfare services, is confidential. Although you contend the submitted information is subject to section 264.408(a), you do not explain, and the information itself does not reflect, this information pertains to the provision of services by a child advocacy center under chapter 264 of the Family Code. Accordingly, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with section 264.408 of the Family 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.). Thus, the city must withhold all public citizens’ dates of birth 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, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 665553

Enc. Submitted documents

c: Requestor
(w/o enclosures)