



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 25, 2017

Ms. Linda Hight  
Records Coordinator  
City of Cleburne  
P.O. Box 677  
Cleburne, Texas 76033-0677

OR2017-16609

Dear Ms. Hight:

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# 667367.

The City of Cleburne (the "city") received three requests from different requestors for a specific police report. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims 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. Section 552.101 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:

...

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

(3) the identity of the person who made the report

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we agree the submitted report 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). Thus, this information is within the scope of section 261.201(a). The city does not indicate the city’s police department has adopted a rule that governs the release of this type of information. Accordingly, we assume no such rule exists. Given that assumption, the city must withhold the submitted report from the first requestor and the third requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986)

(predecessor statute). We note, however, the second requestor is the authorized representative of a parent of the child victim listed in the report, and the parent is not alleged to have committed the suspected abuse. In this instance, the submitted report may not be withheld from this requestor under section 261.201(a). *Id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Accordingly, the city must withhold the identity of the reporting party, which we have marked, under section 261.201(l)(3) of the Family Code. Further, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will address the city's remaining argument against disclosure of the submitted report.

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 the date of birth it has marked, and the additional date of birth we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the submitted report from the first requestor and the third requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With respect to the second requestor, the city must (1) withhold the identity of the reporting party, which we have marked, under section 261.201(l)(3) of the Family Code, (2) withhold the date of birth it has marked, and the additional date of birth we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy, and (3) release the remaining information.<sup>1</sup>

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/>

---

<sup>1</sup>We note the second requestor has a special right of access to the information being released in this instance. *See* Fam. Code § 261.201(k); *see also* Gov't Code § 552.023(a). Accordingly, if the city receives another request for this information from a different requestor, then the city should again seek a ruling from this office.

[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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/tdw

Ref: ID# 667367

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)