



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2017

Mr. Robert Scamardo
General Counsel
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2017-21949

Dear Mr. Scamardo:

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# 676951 (ORR 2017-18-002).

The Fort Bend Independent School District (the "district") received a request for all information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides, in relevant part:

(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; [and]

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

Fam. Code § 261.201(a), (k), (l)(1)-(2). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, the district's police department is such an agency. Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *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) (defining "abuse" for purposes of chapter 261 of the Family Code). Accordingly, we find the submitted information is subject to chapter 261 of the Family Code. However, we note the requestor, who is not alleged to have committed the abuse, may be a parent, managing conservator, or legal representative

of one of the child victims named in the information at issue. As we are unable to make this determination based on the information submitted, we must rule conditionally. If the district determines the requestor is not a parent, managing conservator, or legal representative of any of the child victims, then the submitted information 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 the district determines the requestor is a parent, managing conservator, or legal representative of one of the child victims, then the submitted information may not be withheld on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(1) states any personally identifiable information about a victim or witness who is under 18 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). Thus, the district must withhold the identifying information we marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. In addition, section 261.201(l)(2) states that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2). Thus, we will consider your argument under section 552.108 of the Government Code for the remaining information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See Gov't Code* 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.302(e)(1)(A). You inform us the submitted information is related to a criminal investigation by the district's police department that "has not resulted in a conviction or deferred adjudication." You further state the release of the information "could compromise the investigation [or] prosecution of a crime." We note section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case "that *did not* result in conviction or deferred adjudication." *Id.* § 552.108(a)(2) (emphasis added). Thus, having considered your representations, we find you have not demonstrated the information at issue falls within the scope of section 552.108(a)(2) of the Government Code. *See id.* § 552.301(e)(1)(A). We therefore conclude the district may not withhold the remaining 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 the dates of birth pertaining to the individuals who have been de-identified are not protected as the de-identified individuals' privacy interests are protected. Thus, the district must withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

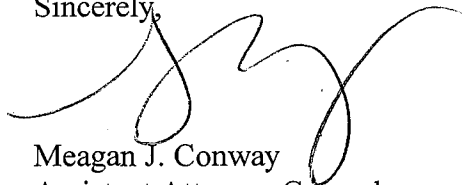
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ See Gov't Code § 552.130. Accordingly, the district must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, if the district determines the requestor is not a parent, managing conservator, or legal representative of any of the child victims, then the submitted information 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 the district determines the requestor is a parent, managing conservator, or legal representative of one of the child victims, then the district must (1) withhold the identifying information we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code; (2) withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) withhold the motor vehicle record information we marked under section 552.130 of the Government Code; and (4) 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/sb

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 676951

Enc. Submitted documents

c: Requestor
(w/o enclosures)