



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2017

Mr. Darrell G-M Noga
Counsel for City of Coppell
Cantey Hanger LLP
1999 Bryan Street, Suite 3300
Dallas, Texas 75201-6822

OR2017-22198

Dear Mr. Noga:

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# 677210 (Coppell Request No. W002750-070617).

The City of Coppell (the "city"), which you represent, received a request for two specified cases. You state the city will release or has released most of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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, including section 261.201 of the Family Code, which provides as follows:

- a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government

¹We 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 that those records contain substantially different types of information than that submitted to this office.

Code, 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;

(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). Upon review, we find the submitted information was used by the city's police department in investigations of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining "abuse" or "neglect" 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). Accordingly, we find the submitted information is subject to chapter 261 of the Family Code. We note, however, the requestor is a parent of the child victim listed in the submitted information, and the parent is not alleged to have committed the suspected abuse or neglect. Thus, the submitted information may not be withheld from this requestor under section 261.201(a). *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 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. *Id.* § 261.201(l)(1). Further, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(l)(3). Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with sections 261.201(l)(1) and 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). Accordingly, we will consider whether the remaining information is otherwise excepted from disclosure.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). The 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.).

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the

information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the requestor has a right of access to his date of birth and his minor children's dates of birth under section 552.023 of the Government Code and these dates of birth may not be withheld from him under section 552.101 in conjunction with common-law privacy. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the city must withhold the dates of birth of members of the public, except the dates of birth of the requestor and his children, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).² *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the city must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with sections 261.201(l)(1) and 261.201(l)(3) of the Family Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the dates of birth of members of the public, except the dates of birth of the requestor and his minor children, under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The city must release the remaining information to this requestor.³

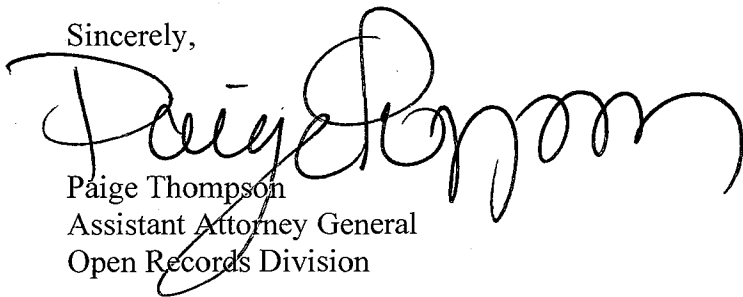
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note the requestor has a right of access to the information being released. *See* Fam. Code § 261.201(k); *see also* Gov't Code §§ 552.023, .137(b). If the city receives another request for this information from a different requestor, the city must again seek a ruling from this office. *See id.* §§ 552.301, .302; Open Records Decision No. 673 (2001). We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b). However, the requestor has a right of access to his social security number and his minor children's social security numbers, which may not be withheld from him under section 552.147 of the Government Code. *See generally id.* § 552.023(a).

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 "Paige Thompson". The signature is written in a cursive, flowing style with a large initial "P".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 677210

Enc. Submitted documents

c: Requestor
(w/o enclosures)