



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 18, 2017

Ms. Ileana Fernandez  
Assistant City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2017-23904

Dear Ms. Fernandez:

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# 680481.

The Mesquite Police Department (the "department") received a request for a specified offense report. You state you will withhold some information under section 552.130 of the Government Code and Open Records Letter No. 2015-24970 (2015).<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 and 552.1175 of the Government Code. We have considered the exception 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 section 261.201(a) of the Family Code, which provides as follows:

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Letter No. 2015-24970 authorizes the department to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

[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). The department asserts the requested information was used or developed in investigations by the department under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Upon review, we find the department has not established the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Therefore, the information is not confidential under section 261.201(a) of the Family Code and the department may not withhold it under section 552.101 on that ground.

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). Upon review, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

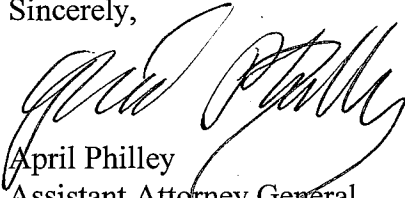
Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure” and “commissioned security officers as defined by section 1702.002, Occupations Code[.]” *Id.* § 552.1175(a)(1), (4). Section

552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988). Upon review, we find some of the submitted information consists of personal information of a peace officer. Thus, to the extent the information you marked relates to a peace officer who elects to restrict access to their information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however, the marked cellular telephone number may only be withheld under section 552.1175 if a governmental body does not pay for the cellular services. If the individual whose information is at issue is not currently a peace officer or did not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175. The department 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](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,



April Philley  
Assistant Attorney General  
Open Records Division

AP/sb

Ref: ID# 680481

Enc. Submitted documents

c: Requestor  
(w/o enclosures)