



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 7, 2017

Ms. Kristen Mills
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2017-25476

Dear Ms. Mills:

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# 683275.

The Baytown Police Department (the "department") received a request for a specified incident report. 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 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 find the submitted report was used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code. Thus, this information is within the scope of section 261.201(a). We note, however, the requestor is the parent of the child victim at issue, and is not alleged to have committed the suspected abuse. Therefore, the department may not withhold the submitted information from the requestor on the basis of section 261.201(a) of the Family Code. *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 department must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with 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 consider whether the submitted information is otherwise excepted from disclosure.

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 requestor has a right of access to her date of birth and her minor child's date of birth under section 552.023 of the Government Code and these dates of birth may not be withheld from her 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). Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information you have marked pertains to an individual who has been deidentified. Thus, his privacy interests are protected and the information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, none of the remaining information may be withheld 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. Upon review, we find the remaining information contains motor vehicle record information subject to section 552.130. However, we note section 552.130 is designed to protect the privacy of individuals and the requestor may be the owner of the vehicle at issue. Accordingly, the requestor may have a right of access to the motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Thus, we must rule conditionally. If the requestor is the owner of the vehicle at issue, the department may not withhold the motor vehicle record information, which we have marked, under section 552.130 of the Government Code and must release this information to the requestor. If, however, the requestor is not the owner of the vehicle at issue, the department must withhold the motor vehicle record information, which we have marked, under section 552.130 of the Government Code.

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).

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with 261.201(l)(3) of the Family Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not the owner of the vehicle at issue, the department must withhold the motor vehicle record information, which we have marked, under section 552.130 of the Government Code. The department must release the remaining information.²

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,



Jahanna Ward
Attorney
Open Records Division

JW/tdw

Ref: ID# 683275

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released in this instance includes information that is confidential with respect to the general public. *See* Fam. Code § 261.201(k); Gov't Code § 552.023(a); ORD 481. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, then the department should again seek a ruling from this office.