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ATTORNEY GENERAL OF TEXAS

November 27, 2017

Mr. Oscar G. Gabaldón, Jr.
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2017-26880

Dear Mr. Gabaldón:

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# 685402 (COEP Case# 17-1026-8830).

The El Paso Police Department (the "department") received a request for records pertaining to a specified address during a specified time period. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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, 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

¹Although the department also raises section 552.101 of the Government Code in conjunction with constitutional privacy for the submitted information, the department provides no arguments explaining how this doctrine applies to the information at issue. Therefore, we assume the department no longer asserts this doctrine. See Gov't Code §§ 552.301, .302.

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.

Fam. Code § 261.201(a), (k), (l)(2). The department states the submitted information relates to investigations of alleged or suspected child abuse or neglect conducted by the department. *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), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Upon review, we agree report numbers 17-090101, 17-185807, and 17-243807 are subject to section 261.201 of the Family Code. However, it is not clear if the requestor is a parent, guardian, or managing conservator of the child victim listed in report numbers 17-090101, 17-185807, and 17-243807. Further, we are unable to determine if the requestor is accused of committing the suspected abuse or neglect regarding report numbers 17-185807 and 17-243807. Thus, we must rule conditionally. If the requestor is not a parent, guardian, or managing conservator of the child victim listed in the information at issue, then, as the department does not indicate it has adopted a rule that governs the release of this type of information, the department must

withhold report numbers 17-090101, 17-185807, and 17-243807 in their entireties 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). If the requestor is a parent, guardian, or managing conservator of the child victim, then the department may not withhold report number 17-090101 under section 552.101 of the Government Code on the basis of section 261.201(a). *Id.* § 261.201(k). Further, if the requestor is a parent, guardian, or managing conservator of the child victim, and is alleged to have committed the abuse or neglect in report numbers 17-185807 and 17-243807, then these reports are confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. If the requestor is a parent, guardian, or managing conservator of the child victim and is not alleged to have committed the abuse or neglect in report numbers 17-185807 and 17-243807, then the department may not withhold these reports under section 552.101 of the Government Code on the basis of section 261.201(a). *Id.* § 261.201(k). We note 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, to the extent the requestor has a right of access under section 261.201(k) to report numbers 17-090101, 17-185807, and 17-243807, we will consider whether any portion of these reports is otherwise excepted from disclosure. However, we find the department has failed to demonstrate the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, the department has not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4). Therefore, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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.). However, we note the remaining information includes the requestor's date of birth. The requestor has a right of access to this information. *See* Gov't Code § 552.023(a) ("a person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to a person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the department may not withhold the requestor's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Further, we note the requestor may be a parent, guardian, or managing conservator of one of the individuals at issue. In this instance, the requestor would also have

a special right of access to information related to this individual that would otherwise be protected under common-law privacy. See Gov't Code § 552.023(a); ORD 481 at 4. Therefore, to the extent the requestor is a parent, guardian, or managing conservator of the individual at issue, the department may not withhold the date of birth related to this individual from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, the department must withhold the remaining public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the requestor is not a parent, guardian, or managing conservator of the child victim at issue, then the department must withhold report numbers 17-090101, 17-185807, and 17-243807 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a parent, guardian, or managing conservator of the child victim and is alleged to have committed the abuse or neglect in report numbers 17-185807 and 17-243807, then the department must withhold these reports under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is a parent, guardian, or managing conservator of the child victim at issue and is not alleged to have committed the abuse or neglect, then the department must (1) withhold the public citizens' dates of birth to which the requestor does not have a right of access under section 552.101 of the Government Code in conjunction with common-law privacy, and (2) 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 685402

Enc. Submitted documents

c: Requestor
(w/o enclosures)