



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 29, 2017

Mr. Thomas Royce Hansen
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2017-27078

Dear Mr. Hansen:

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# 686753 (PIR No. W065239).

The City of Fort Worth (the "city") received a request for all reports pertaining to the requestor, including two specified police reports. You state the city has released some information to the requestor. 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, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government 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 Exhibits C-1, C-2, C-3, C-6, C-7, C-9, and C-10 consist of information that was used or developed in investigations by the city's police department of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Family Code chapter 261); *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 disabilities of minority removed for general purposes). Therefore, we find this information is subject to chapter 261 of the

Family Code. Accordingly, the city must withhold Exhibit C-7 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

However, we note the requestor is listed as the child victim named in Exhibits C-1, C-2, C-3, and C-10, and the requestor is now an adult. Additionally, we note the requestor is the parent of the child victim listed in Exhibit C-6 and the parent of one of the child victims listed in Exhibit C-9, and is not accused of committing the alleged or suspected child abuse or neglect. Therefore, the city may not withhold this information from the requestor under section 261.201(a). *See id.* § 261.201(k). However, section 261.201(1)(1) states any personally identifiable information about a victim or witness who is under 18 years of age and is not the child who is the subject of the report or a child of the parent, managing conservator, or other legal representative requesting the information shall be withheld from disclosure. *Id.* § 261.201(1)(1). Accordingly, the city must withhold the personally identifiable information about victims or witnesses who are under 18 years of age, which we marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code. Additionally, section 261.201(1)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Accordingly, the city must withhold the identities of the reporting parties we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. Further, section 261.201(1)(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(1)(2). Therefore, we will address your remaining arguments against disclosure of the information at issue.

Section 552.101 also encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

- (1) a juvenile justice agency, as defined by Section 58.101;
- (2) a criminal justice agency, as defined by Section 411.082, Government Code;
- (3) the child; or
- (4) the child's parent or guardian.

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

- (1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
- (2) any information that is excepted from required disclosure under [the Act] or any other law.

Fam. Code § 58.008(b); *see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22, 2017 Tex. Sess. Law Serv 3173, 3187. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we find Exhibits C-1, C-3, C-4, C-5, C-6, and C-8 involve juvenile offenders, so as to fall within the scope of section 58.008(b). Accordingly, the city must withhold Exhibits C-1, C-3, C-6, and C-8 under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code.¹

We note, however, the requestor is of one of the juvenile offenders listed in Exhibits C-4 and C-5. As such, the requestor has a right to inspect juvenile law enforcement records concerning herself pursuant to section 58.008(d) of the Family Code. *Id.* § 58.008(d). However, section 58.008(e)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child must be redacted. *Id.* § 58.008 (e)(1). Accordingly, the city must withhold the identifying information of the juvenile offenders we marked under section 552.101 of the Government Code in conjunction

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

with section 58.008(e)(1) of the Family Code. Further, section 58.008(e)(2) provides information subject to any other exception to disclosure under the Act or other law must also be redacted. *Id.* § 58.008 (e)(2). Thus, we will address the applicability of other exceptions to disclosure of the information in Exhibits C-4 and C-5.

Additionally, upon review, we are unable to determine the age of the offender at the time of the alleged offenses listed in Exhibit C-2. Thus, we must rule conditionally. If the offender at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the city must withhold Exhibit C-2 in its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, if the offender at issue was not ten years of age or older and under seventeen years of age at the time of the conduct, then the information does not involve juvenile conduct for purposes of section 58.008(b) of the Family Code, and no portion of the information at issue may be withheld under section 552.101 of the Government Code on that basis.

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.). Thus, the city must withhold the 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.² See Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the city must withhold Exhibit C-7 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold the personally identifiable information about victims or witnesses who are under 18 years of age we marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code, and the identities of the reporting parties we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The city must withhold Exhibits C-1, C-3, C-6, C-8, and, to the extent the offender in Exhibit C-2 was ten years of age or older and under seventeen

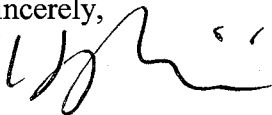
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

years of age at the time of the conduct at issue, Exhibit C-2 under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code. The city must withhold the identifying information of the juvenile offenders we marked under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. The city must withhold the dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must release the remaining information.³

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 686753

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a special right of access to the information being released in this instance. See Fam. Code §§ 261.201(k); 58.008(d); see also Gov't Code § 552.023(a). Accordingly, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office. We also note the information being released includes 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. Gov't Code § 552.147(b).