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ATTORNEY GENERAL OF TEXAS

January 17, 2018

Ms. Vanessa A. Gonzalez
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Austin, Texas 78746

OR2018-01005

Dear Ms. Gonzalez:

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# 691886 (ORR Nos. 17-170 & 17-173).

The Baylor University Police Department (the "department") received two requests from different requestors for information related to a specified incident. The department claims the submitted information does not consist of public information subject to the Act. In the alternative, the department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information. Additionally, the department provides documentation showing it has notified two individuals of the right to submit comments to this office why some of the submitted information should not be released.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

Initially, we note the 84th Legislature added section 51.212(f) of the Education Code, which reads as follows:

(f) A campus police department of a private institution of higher education is a law enforcement agency and a governmental body for purposes of [the Act], only with respect to information relating solely to law enforcement activities.

Educ. Code § 51.212(f). We understand the department is a campus police department of a private institution of higher education. *See id.* §§ 51.212(e), 61.003. Thus, the department is a governmental body for purposes of the Act, and information maintained by the department is subject to disclosure under the Act, to the extent such information relates solely to law enforcement activities. The department indicates the submitted information is maintained by the department. However, the department contends the submitted information relates to a child custody matter and does not involve the investigation of a potential crime. Thus, the department claims the information is not solely related to law enforcement activities. Nevertheless, we find the submitted information was created by the department for the purpose of law enforcement. Therefore, we find the submitted information relates solely to law enforcement activities for purposes of section 51.212(f) of the Education Code, and thus the information is subject to the Act. Accordingly, the department must release the submitted information unless it falls within an exception to public disclosure under the Act. *See Gov't Code* §§ 552.006, .021, .301, .302. Consequently, we will consider the department's argument against disclosure of the submitted information.

Section 552.101 of the Government Code excepts from public 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 section 261.201 of the Family Code, which provides, in 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.

Fam. Code § 261.201(a). The department raises chapter 261 of the Family Code for the submitted information. Upon review, we find the department has not demonstrated any portion of the submitted 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) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Therefore, the department may not withhold the submitted 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 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 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 Third 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.). A portion of the submitted information consists of the date of birth of the first requestor’s client. This information, which we have noted, must be withheld from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.² Section 552.130 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. *See* Gov’t Code § 552.130. A portion of the remaining information, which we noted, consists of motor vehicle record information belonging to the first requestor’s client. Accordingly, the department must withhold the motor vehicle record information we noted from the second requestor under section 552.130 of the Government Code.

In summary, the department must withhold the first requestor’s client’s date of birth, which we noted, from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy and must withhold the first requestor’s client’s motor vehicle record information from the second requestor under section 552.130 of the

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).

Government Code.³ The department must release the remaining information to each requestor.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 691886

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

³We note the first requestor has a right of access to his client's private information. 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).