



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 24, 2018

Mr. Joseph Gorfida, Jr.
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2018-01581

Dear Mr. Gorfida:

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# 692640 (File# 17-970).

The Richardson Police Department (the "department") received a request for 11 incident reports. We understand the department is withholding dates of birth pursuant to the previous determination issued in Open Records Letter No. 2017-00069 (2017).¹ You state the department has release some of the requested information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, you inform us incident report number 201700101448 was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2018-00151 (2018). In that ruling, we concluded: (1) because none of the requestors properly requested the submitted body worn camera recording pursuant to chapter 1701, our ruling does not reach the body worn camera recording at issue and the department is not required to release it; and (2) the department may withhold the remaining information under

¹Open Records Letter No. 2017-00069 is a previous determination issued to the department authorizing it 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.

section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the department may rely on Open Records Letter No. 2018-00151 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments for 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 information protected by other statutes, such as section 261.201 of the Family Code, which provides, in 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 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state incident report numbers 201700025076 and 201700025836 pertain to information used or developed in alleged or suspected child abuse investigations under section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 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). Further, we note the information we marked also pertains to information used or developed in alleged child abuse or neglect investigations. Upon review, we find incident report numbers 201700025076 and 201700025836 and the information we marked are subject to chapter 261 of the Family Code. As the department does not indicate it has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we

conclude the information at issue is confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1966) (predecessor statute). Accordingly, the department must withhold incident report numbers 201700025076 and 201700025836 in their entireties and the additional information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

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.³ *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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See, e.g.*, Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. Upon review, we find the department must withhold the motor vehicle record information it marked and the additional information we marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the department must withhold

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

³The 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).

the information it marked and the additional information we marked under section 552.136 of the Government Code.

In summary, the department must withhold incident report numbers 201700025076 and 201700025836 in their entireties and the additional information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information it marked and the additional information we marked under section 552.130 of the Government Code. The department must withhold the information it marked and the additional information we marked under section 552.136 of the Government Code. 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, 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,



James M. Graham
Attorney
Open Records Division

JMG/eb

Ref: ID# 692640

Enc. Submitted documents

c: Requestor
(w/o enclosures)