



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 13, 2018

Mr. Gabriel A. Rodriguez
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2018-03434

Dear Mr. Rodriguez:

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# 701646 (City File Nos. VHer2 and ARod7).

The Corpus Christi Police Department (the "department") received two requests for a specified report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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. Section 261.201 provides, in relevant part, 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 information was used or developed in an investigation by the department of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to section 261.201 of the Family Code. You state the department has not adopted a rule that governs the release of this type of information. Thus, we conclude the submitted information is generally confidential pursuant to section 261.201 of the Family Code and must be withheld in its entirety from the second requestor under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we note the first requestor is a parent of the child victim listed in the information and is not alleged to have committed the suspected abuse or neglect. Thus, pursuant to section 261.201(k), the information at issue may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, we note the identity of the reporting party must be withheld under section 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

must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider your remaining arguments against the disclosure of the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to a pending criminal investigation. Based on your representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information you marked.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identity of the complainant. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the department may withhold the information it marked from the first requestor under section 552.108(a)(1) of the Government Code. As noted above, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. Fam. Code § 261.201(l)(3). Accordingly, in releasing the basic information to the first requestor, the department must withhold the identity of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

The department asserts the dates of birth it marked are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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 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 one of the dates of birth within the remaining information pertains to an individual who has been de-identified; thus, his privacy interests are protected. Accordingly, the department may not withhold this

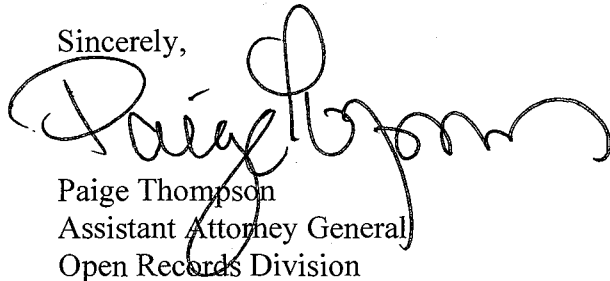
individual's date of birth under section 552.101 in conjunction with common-law privacy. However, the department must withhold the remaining date of birth it marked under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the basic information, the department may withhold the information it marked under section 552.108(a)(1) of the Government Code from the first requestor. In releasing the basic information to the first requestor, the department must withhold the identity of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. With the exception of the date of birth pertaining to the de-identified individual, the department must withhold the date of birth it marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information to the first requestor.¹

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

¹In this instance, the first requestor has a special right of access to the information being released pursuant to section 261.201(k) of the Family Code. The department should again seek a decision from this office if it receives another request for this information from a different requestor. See Fam. Code § 261.201(k); Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

Ref: ID# 701646

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)