



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 25, 2019

Ms. Jessika J. Velasquez  
Counsel for the City of Watauga  
Evans, Daniel, Moore, Evans, Biggs & Decker  
115 West Second Street, Suite 202  
Fort Worth, Texas 76102

OR2019-05184

Dear Ms. Velasquez:

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# 753326 (ORR# 18-698).

The Watauga Police Department (the "department"), which you represent, received a request for information pertaining to a specified arrest. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> We have considered the claimed exceptions 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. This section 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 [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:

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<sup>1</sup>We understand the department to raise section 552.130 based on its markings.

(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). The department asserts the submitted information was used or developed in an investigation 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 section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Upon review, we find the submitted information is within the scope of section 261.201(a). However, we note the requestor, who is not alleged to have committed the suspected abuse, may be a managing conservator or other legal representative of the child victim and the other juveniles at issue. Thus, we must rule conditionally. If the requestor is not a managing conservator or other legal representative of the child victim, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the

requestor is a managing conservator or other legal representative of the child victim, then the department may not withhold the submitted information from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(3) provides the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). In that event the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. In addition, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must be redacted. *Id.* § 261.201(l)(2). Therefore, in the event the requestor is a managing conservator or other legal representative of the child victim, we must determine whether the remaining information is otherwise excepted from release under the Act.

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 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.). If the requestor is a managing conservator or other legal representative of the child victim and the other juveniles at issue, then he has a right of access to their dates of birth pursuant to section 552.023 of the Government Code. *See Gov't Code* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In addition, some of the individuals whose dates of birth are at issue have been de-identified pursuant to section 261.201(l)(3) of the Family Code. Therefore, the privacy interests in their dates of birth are sufficiently protected, and the department may not withhold them under common-law privacy. Nevertheless, the department must withhold the remaining dates of birth under section 552.101 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. *See Gov't Code* § 552.130. The department must withhold the motor vehicle record information it has marked, as well as the information we have marked, under section 552.130 of the Government Code.

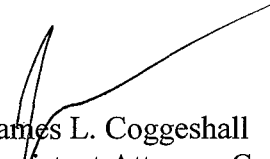
In summary, if the requestor is not a managing conservator or other legal representative of the child victim, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a managing conservator or other legal representative of the child victim and the other juveniles at issue, then the department must (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction

with section 261.201(1)(3) of the Family Code; (2) with the exception of the dates of birth to which the requestor has a right of access under section 552.023 of the Government Code and those of the individuals have been de-identified pursuant to section 261.201(1)(3) of the Family Code, withhold the submitted dates of birth under section 552.101 in conjunction with common-law privacy; (3) withhold the information marked under section 552.130 of the Government Code; and (4) 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](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 L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/som

Ref: ID# 753326

Enc. Submitted documents

c: Requestor  
(w/o enclosures)