



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 23, 2019

Ms. Samantha Courtney  
Records Clerk  
Hood County Sheriff's Office  
400 Deputy Larry Miller Drive  
Granbury, Texas 76048

OR2019-10677

Dear Ms. Courtney:

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# 761332.

The Hood County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident involving two named individuals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the obligations of the sheriff's office under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate

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<sup>1</sup>Although you do not raise section 552.101 of the Government Code in your brief, we understand you to raise this exception based on your markings.

which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). The sheriff's office received the request for information on February 12, 2019. We understand the sheriff's office was closed on February 18, 2019. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, you were required to provide the information required by section 552.301(e) by March 6, 2019. However, the envelope in which the sheriff's office provided some of the information required by section 552.301(e) was postmarked March 11, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the sheriff's office failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exception.

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. Section 552.101 encompasses information protected by section 261.201 of the Family Code, which provides, in relevant 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 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 submitted information relates to an investigation of alleged or suspected child abuse or neglect conducted by the sheriff's office. *See 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 the disabilities of minority removed for general purposes), 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. We note the requestor is a step-parent of the child victim listed in the submitted information, and is not alleged to have committed the abuse or neglect. Because it is not clear if the requestor is a parent or guardian of the child victim, we must rule conditionally. If the requestor is not a parent or guardian of the child victim in the submitted information, then the sheriff's office must withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a parent or guardian of the child victim in the submitted information, then she has a right of access to this information under section 261.201(k). *See id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the sheriff's office must withhold the reporting party's identity, which we marked, under section 552.101 of the Government Code in conjunction with 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(1)(2). Accordingly, we will consider whether the remaining information is otherwise excepted from disclosure.

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.). We note the requestor has a right of access to her own date of birth and the date of birth of the child victim if she is the parent or guardian of the child victim pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023 (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 individual requests information concerning himself). Thus, with the exception of the information we marked to release, the sheriff's office must withhold the public citizens' dates of birth you marked and the additional dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining dates of birth you marked either pertain to the requestor or an individual who has been de-identified and whose privacy interest is, thus, protected. Accordingly, the sheriff's office may not withhold the remaining dates of birth you marked 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(a). Upon review, we find portions of the remaining information consist of motor vehicle record information. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the information we marked to release, the sheriff's office must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code.

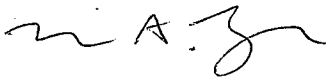
In summary, if the requestor is not a parent or guardian of the child victim in the submitted information, then the sheriff's office must withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a parent or guardian of the child victim, then (1) the sheriff's office must withhold the information we 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 information we marked to release, the sheriff's office must

withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.130 of the Government Code; and (3) the sheriff's office must release the remaining information.<sup>2</sup>

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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/sb

Ref: ID# 761332

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the information being released in that case contains a social security number. 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. See Gov't Code § 552.147(b).