



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 20, 2019

Ms. Shea Smith
Assistant City Attorney
City of Sugar Land
P. O. Box 110
Sugar Land, Texas 77487-0110

OR2019-16755

Dear Ms. Smith:

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# 771392 (ORR# W006536, W006618).

The City of Sugar Land (the "city") received two requests from different requestors for a specified incident report. The city indicates it will withhold information pursuant to section 552.130(c) of the Government Code.¹ The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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:

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

(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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report;

or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(1)-(2). Upon review, we find the submitted information was used or developed by the city's police department 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) (defining "abuse" for purposes of section 261.201). Thus, the submitted information is within the scope of section 261.201(a). However, we note the requestors, neither of whom is alleged to have committed the suspected abuse, may each be a parent, managing conservator, or other legal representative of one or more of the child victims. Consequently, we must rule conditionally. If a requestor is not a parent, managing conservator, or other legal representative of any of the child victims, then the city must withhold the submitted information in its entirety from that requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If a requestor is a parent, managing conservator, or other legal representative of one or more of the child victims, then the city may not withhold the submitted information from that requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Nevertheless, section 261.201(l)(1) states any personally identifiable information about a victim or witness who is under 18 years of age and is not the child of the parent, managing conservator, or other legal representative requesting the information shall be withheld from disclosure. *Id.* § 261.201(l)(1). Accordingly, the city must withhold the personally identifiable information of a child victim from a requestor who is not that child's parent under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) 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 a requestor is a parent, managing conservator, or other legal representative of one of the child victims, we must address the city's remaining arguments to withhold the information at issue from that requestor.

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. *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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.). Each requestor has a right of access to his own date of birth and the date of birth of any child of that requestor 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, because a juvenile victim who is not a child of a requestor will be de-identified pursuant to

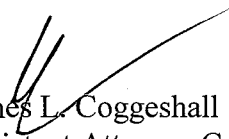
261.201(1)(1) of the Family Code, the privacy interests in that child's date of birth is sufficiently protected, and the city may not withhold it under common-law privacy. Nevertheless, the city must withhold the date of birth of the offender at issue in the submitted report under section 552.101 in conjunction with common-law privacy. The city must also withhold the date of birth of the first requestor from the second requestor. We also find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if a requestor is not a parent of any of the child victims at issue, then the city must withhold the submitted information in its entirety from that requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If a requestor is a parent of any of child victims, then the city must (1) withhold the personally identifiable information of any child victim who is not that child's parent under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code; (2) withhold the date of birth of the offender and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) withhold the date of birth of the first requestor from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy; 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, 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/be

Ref: ID# 771392

Enc. Submitted documents

c: 2 Requesters
(w/o enclosures)