



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 9, 2019

Mr. M. Matthew Ribitzki
Deputy City Attorney
City of Burleson
141 West Renfro
Burleson, Texas 76028

OR2019-18542

Dear Mr. Ribitzki:

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# 774125 (Reference No. 942).

The Burleson Police Department (the "department") received a request for a specified incident report. The department states it released some of the requested information. The department states it will redact dates of birth pursuant to the previous determination issued in Open Records Letter No. 2016-08169 (2016).¹ You also state the department will redact motor vehicle record information under section 552.130(c) of the Government Code, social security numbers under section 552.147(b) of the Government Code, and information, including e-mail addresses, pursuant to Open Records Decision No. 684 (2009).² You claim

¹Open Records Letter No. 2016-08169 authorized the department to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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). 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 id.* § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

the submitted information is excepted from disclosure under section 552.101 of the Government Code.³ We have considered the exception 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, which provides 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 . . . 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:

³We note the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov’t Code § 552.301(b), (e). Nonetheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the department’s violation of section 552.301 in requesting this decision.

(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; [and]

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

Fam. Code § 261.201(a), (k), (l)(1)-(2). The submitted information was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” for purposes of Fam. Code ch. 261); *see also 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). Thus, we find the submitted information is subject to section 261.201 of the Family Code. However, we note the requestor is a parent of the child victims. Further, the requestor is not alleged to have committed the suspected abuse. Therefore, the department may not use section 261.201(a) to withhold the submitted information from this requestor. *Id.* § 261.201(k). However, 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). Therefore, the department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code.⁴ 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 disclosure of the remaining information at issue.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety (“DPS”) maintains confidential, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See Gov’t Code* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to

⁴As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The information at issue contains a Federal Bureau of Investigation (“FBI”) number that constitutes CHRI generated by the FBI. Upon review, we find some of the information at issue is CHRI for chapter 411 purposes. Accordingly, the department must withhold the FBI number in the submitted information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

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 *Industrial Foundation*. *Id.* at 683. Upon review, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern or it pertains to individuals who are deidentified. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.136(b) 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.”⁵ Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the department must withhold the account number in the remaining information under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. The department must withhold the FBI number under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The

⁵The 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).

department must withhold the account number under section 552.136 of the Government Code. The department must release the remaining information.⁶

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,



Jahanna Ward
Assistant Attorney General
Open Records Division

JW/eb

Ref: ID# 774125

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶Because this requestor has a special right of access to the information being released, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office. *See* Fam. Code § 261.201(k) (parent of child victim of abuse or neglect who is not suspected of abuse or neglect has right of access to information otherwise confidential under section 261.201(a) of the Family Code), (1)(2) (providing any information excepted from required disclosure under the Act or other law must be withheld from disclosure).