



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

August 14, 2019

Lieutenant Luis Martinez  
Laredo Police Department  
4712 Maher Avenue  
Laredo, Texas 78041

OR2019-22564

Dear Lt. Martinez:

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# 780710 (Reference No. W012510-051719).

The Laredo Police Department (the "department") received a request for reports involving a named individual and the requestor's client, including the report for a specified incident. You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations 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. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The department received the request for information on May 17, 2019. We note the department sought and received clarification of the request on May 17, 2019. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We understand the department was closed for business on May 27, 2019, in observance of Memorial Day. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the department was required to provide the

information required by section 552.301(b) by June 3, 2019. However, the envelope in which the department provided the information required by section 552.301(b) was meter marked June 6, 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 department 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). The department claims section 552.108 of the Government Code for the submitted information. We note portions of the submitted information are subject to section 552.101 of the Government Code.<sup>1</sup> Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this exception to the submitted information. However, we find the department has failed to establish a compelling reason to address its claimed exception.

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, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See Open Records Decision Nos.* 481 (1987), 480 (1987), 470 (1987).

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.

Fam. Code § 261.201(a), (k). Upon review, we find the information pertaining to report number 19-008911 was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *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). Accordingly, the information pertaining to report number 19-008911 is within the scope of section 261.201 of the Family Code.

In this instance, the requestor is an attorney representing a parent of the child victim listed in report number 19-008911. However, report number 19-008911 reflects the requestor’s client is also alleged to have committed the suspected abuse or neglect. Accordingly, this requestor does not have a right of access to the information at issue pursuant to section 261.201(k). *See id.* § 261.201(k). Thus, we conclude the information pertaining to report number 19-008911 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code.

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.).


However, we note the information at issue includes dates of birth belonging to the requestor’s client and her client’s minor child. The requestor has a right of access to this information. *See Gov’t Code* § 552.023(a) (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Upon review, except for the dates of birth of the requestor’s client and her client’s minor child, the department must withhold the public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the information pertaining to report number 19-008911 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code. Except for the dates of birth of the requestor's client and her client's minor child, the department must withhold the public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information to this requestor.<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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/gw

Ref: ID# 781710

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> We note the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office