



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2019

Ms. Debra L. Goetz
Counsel for McAllen Independent School District
Atlas, Hall & Rodriguez, L.L.P.
P.O. Box 3725
McAllen, Texas 78502-3725

OR2019-27373

Dear Ms. Goetz:

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# 788724.

The McAllen Independent School District (the "district"), which you represent, received a request for complaints against several named individuals during a specified time period. The district claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the district claims and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor argues the district failed to comply with 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 id.* § 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). Pursuant to section 552.301(d), the governmental body must provide the requestor, within ten business days after the date of its receipt of the request for information, a statement the governmental body has asked for a decision from the attorney general and a copy of the governmental body's written communication to the attorney general asking for a decision. *See id.* § 552.301(d). Further, 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 which exceptions apply to which parts of the documents. *See id.* § 552.301(e). Pursuant to section 552.301(e-1), a governmental body that submits written comments to the attorney general under section 552.301(e)(1)(A) must, within fifteen business days of receiving the request for information, send a copy of those comments to the person who requested the information from the governmental body. *See id.* § 552.301(e-1). We understand the district received the request for information on June 13, 2019. The district informs us it was closed for business between June 21, 2019, and July 15, 2019, as well as on June 14, 2019; July 19, 2019; and July 26, 2019. The district does not inform us it was closed for any additional business days between June 13, 2019, and August 1, 2019. Accordingly, the district was required to provide the information required by sections 552.301(b) and 552.301(d) by July 24, 2019. Moreover, the district was required to provide the information required by sections 552.301(e) and 552.301(e-1) by August 1, 2019. We note the envelopes in which the district provided the information required by sections 552.301(b) and 552.301(e) bear certified mail tracking numbers showing they were mailed on July 23, 2019, and July 31, 2019, respectively. *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). We further note the requestor provided a copy of the district's written communication to this office asking for a decision, as required by section 552.301(d). However, the requestor also claims the district failed to provide him with a copy of its written comments as required by section 552.301(e-1). In response, the district informs this office there "may have been an oversight, perhaps due to district personnel changes, with respect to" providing the correspondence at issue to the requestor. We also note the correspondence submitted to this office pursuant to section 552.301(e) does not reveal a copy was sent to the requestor. Accordingly, upon review, we conclude the district 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 district claims section 552.101 of the Government Code for some of the submitted information. Because section 552.101 can provide a compelling reasons to overcome the presumption of openness, we will address the applicability of this exception to the submitted information. However, we find the district has failed to establish a compelling reason to address its remaining claimed 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. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

- (a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

Fam. Code § 261.201(a). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, the district's police department (the "department") is such an agency. Report number 03202018-000992 was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the department. *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 chapter 261 of the Family Code. The district does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the district must withhold report number 03202018-000992 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Report numbers 05062016-001294 and 05222015-001600 consist of reports of alleged abuse or neglect made to the district. However, we are unable to determine the ages of the victims listed in the information at issue. *See* Fam. Code §§ 101.003(a), 261.001(1), (4). Accordingly, we must rule in the alternative. If report number 05062016-001294 or report number 05222015-001600 involves a victim who was a child at the time of the incident at issue, then that information is subject to chapter 261 of the Family Code. In that instance, as the district does not indicate it has adopted a rule that governs the release of this type of information, the district must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if report number 05062016-001294 or report number 05222015-001600 does not involve a victim of alleged abuse or neglect who was a child at the time of the incident at issue, then that information is not subject to chapter 261 of the Family Code and the district may not withhold the information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In that instance, we will consider the applicability of other exceptions to disclosure of the information at issue.

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.

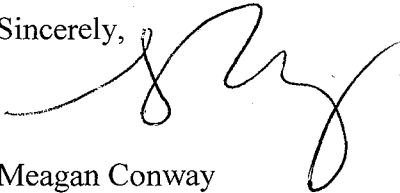
The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the district must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the district must withhold report number 03202018-000992 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If report number 05062016-001294 or report number 05222015-001600 involves a victim who was a child at the time of the incident at issue, then the district must withhold that information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district must withhold all public citizens' dates of birth under section 552.101 of the Government Code. The district must 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 <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,



Meagan Conway
Assistant Attorney General
Open Records Division

MC/jxd

Ref: ID# 788724

Enc. Submitted documents

c: Requestor
(w/o enclosures)