



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2019

Ms. Yessenia Gonzalez
Administrative Supervisor
Brownsville Police Department
600 East Jackson Street
Brownsville, Texas 78520

OR2019-27477

Dear Ms. Gonzalez:

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# 788852.

The Brownsville Police Department (the "department") received a request for certain information pertaining to twenty-nine specified call numbers. You state the department does not have information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes a police officer's body worn camera recording. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

(1) the date and approximate time of the recording;

¹ The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recording at issue was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and the department need not release it.² However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

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 information protected by other statutes, such as section 58.008(b) of the Family Code, which provides:

Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Act of May 14, 2019, 86th Leg., R.S., H.B. 1760, § 4 (to be codified at Fam. Code § 58.008(b)); *see also* Fam. Code § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) applies to records of juvenile conduct that occurred before, on, or after September 1, 2017. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). You assert portions of the remaining information are subject to section 58.008(b) of the Family Code. We note section 58.008(b) does not apply to law enforcement records that relate to a juvenile involved only as a complainant, victim,

² As we are able to make this determination, we need not address your arguments against disclosure of this information.

witness, or other involved party; rather, the juvenile must be involved as a suspect, offender, or defendant.

Upon review, we find some of the remaining information involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply; thus, the department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.³ Moreover, some of the remaining information involves delinquent conduct or conduct indicating a need for supervision. However, we are unable to determine the ages of the offenders involved in the information at issue. Accordingly, we must rule in the alternative. To the extent the information we marked and indicated involves an offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then, as it does not appear any of the exceptions in section 58.008 apply, the department must withhold that information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.⁴ Conversely, to the extent the information at issue does not involve an offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, section 58.008(b) is not applicable to such information and it may not be withheld under section 552.101 of the Government Code on that basis. However, you have failed to demonstrate any portion of the remaining information depicts an individual who is ten years of age or older and under the age of seventeen as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code.

Section 552.101 of the Government Code also encompasses 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.

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴ In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Id. § 261.201(a), (h). You assert some of the remaining information is confidential under section 261.201(a). However, section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. *Id.* § 261.201(h). The information at issue relates to investigations of alleged abuse or neglect occurring in a child care facility that was regulated by the Texas Department of Family and Protective Services (“DFPS”) under chapter 42 of the Human Resources Code at the time of the incidents in question. Thus, we find section 261.201 is not applicable to the investigation at issue, and the department may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.⁵ Gov’t Code § 552.1175. Section 552.1175(a) applies, in part, to a “current or former child protective services caseworker, adult protective services caseworker, or investigator for the [DFPS] or a current or former employee of a [DFPS] contractor performing child protective services caseworker, adult protective services caseworker, or investigator functions for the contractor on behalf of [DFPS.]” Act of May 25, 2019, 86th Leg., R.S., S.B. 662, § 3 (to be codified at Gov’t Code § 552.1175(a)(15)). We note section 552.1175 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 6 (1988). Accordingly, to the extent the information we marked and indicated pertains to an individual described in section 552.1175(a)(15) of the Government Code and the individual at issue elects to restrict access to their information under section 552.1175(b), the department must withhold such information under section 552.1175 of the Government Code; however, the department may only withhold the cellular telephone numbers at issue if a governmental body did not pay for the cellular telephone services.⁶

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

⁵ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁶ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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. This office has also held common-law privacy protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, the 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.). We note some of the dates of birth within the remaining information relate to individuals who will be de-identified and whose privacy interests are, thus, protected. Thus, dates of birth pertaining to de-identified individuals may not be withheld on the basis of common-law privacy. We also note the right to privacy is a personal right that lapses at death and the common-law right to privacy does not encompass information that relates only to a deceased individual. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broad. Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 6521 (1977))); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Thus, information pertaining to a deceased individual may not be withheld on common-law privacy grounds.

Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the dates of birth pertaining to de-identified individuals, the department must withhold all living individuals' dates of birth within the remaining information and the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, as the body worn camera recording at issue was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and the department need not release it. The department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. To the extent the information we

marked and indicated involves an offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the department must withhold such information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. To the extent the information we marked and indicated pertains to an individual described in section 552.1175(a)(15) of the Government Code and the individual at issue elects to restrict access to their information under section 552.1175(b), the department must withhold such information under section 552.1175 of the Government Code; however, the department may only withhold the cellular telephone numbers at issue if a governmental body did not pay for the cellular telephone services. With the exception of the dates of birth pertaining to de-identified individuals, the department must withhold all living individuals' dates of birth within the remaining information and the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department 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,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/mo

Ref: ID# 788852

Enc. Submitted documents

c: Requestor
(w/o enclosures)