



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 31, 2019

Mr. Whitt L. Wyatt  
Counsel for the City of Colleyville  
Wood, Banowsky, P.L.L.C.  
3710 Rawlins Street, Suite 1000  
Dallas, Texas 75219

OR2019-30826

Dear Mr. Wyatt:

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# 794456 (Ref. No. PD-19-0106).

The Colleyville Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You state the department will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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. This section encompasses information protected by section 261.201 of the Family Code, which provides, in relevant 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.

...

(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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). The submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect 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. However, the requestor is a parent of the child victim listed in the information and is not alleged to have committed the abuse or neglect. Thus, pursuant to section 261.201(k), the information at issue may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a).

*See id.* § 261.201(k). However, we note 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). Further, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(l)(3). Accordingly, we find the department must withhold the personally identifiable information about victims or witnesses who are under 18 years of age and are not the child of the requestor, which we have marked and indicated, and withhold the identifying information of the reporting party, which we have also marked and indicated, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) and section 261.201(l)(3) of the Family Code, respectively. In addition, 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). Therefore, we will consider the department's arguments for the remaining information.

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.). The remaining information contains public citizens' dates of birth. However, we note the requestor has a right of access to her own date of birth and the date of birth of her minor child. *See* Gov't Code § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is 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 herself). Thus, with the exception of the date of birth of the requestor and her minor child, the department must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You raise section 552.108(a)(2) for the remaining information and argue this information relates to a closed criminal investigation by the department that did not result in conviction or deferred adjudication. However, you provide our office with a representation from the department stating release of the information would interfere with the department's criminal investigation. Because you have provided this office with conflicting arguments, we find the department has failed to demonstrate the

applicability of section 552.108(a)(2) of the Government Code to the information it has marked. Therefore, none of the information at issue may be withheld under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own and her minor child's motor vehicle record information under section 552.023 of the Government Code and this information may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Therefore, the department must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

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.<sup>1</sup> Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Thus, if the officer whose information is at issue elected to restrict access to the information we indicated in accordance with section 552.1175(b), the department must withhold the information at issue under section 552.1175 of the Government Code; however the cellular telephone number we have indicated may only be withheld if a government body does not pay for the cellular service.

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 and section 261.201(l)(3) of the Family Code. With the exception of the date of birth of the requestor and her minor child, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. The department must withhold the information we have indicated under section 552.1175 of the Government Code if the officer whose information is at issue elected to restrict access to this information in accordance with section 552.1175(b) of the Government Code; however the cellular telephone number we have indicated may only be withheld if a

---

<sup>1</sup> The 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, 480 (1987), 470 (1987).

government body does not pay for the cellular service. The remaining information must be released.<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,

A handwritten signature in black ink, appearing to read 'Michelle Garza', written over a horizontal line.

Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/rm

Ref: ID# 794456

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</sup> The requestor has a right of access to the information being released in this instance. *See* Fam. Code § 261.201(k); *see* Gov't Code § 552.023(a); ORD 481 at 4. If the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. *See* Gov't Code § 552.301, .302; Open Records Decision No. 673 (2001).