



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 8, 2019

Mr. Alexander Garcia
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2019-31692

Dear Mr. Garcia:

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# 804367 (CCPD No. MFlo5).

The Corpus Christi Police Department (the "department") received a request for a specified police report. 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.

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, 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.

(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:

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

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *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 the submitted information is subject to chapter 261 of the Family Code. However, we note the requestor may be a parent, guardian, or managing conservator of the child victims listed in the report, and is not alleged to have committed the abuse. As such, this requestor may have a right of access to the submitted information pursuant to section 261.201(k). As we are unable to determine whether the requestor is a parent, guardian, or managing conservator of the child victims, we rule conditionally. If the requestor is not a parent, guardian, or managing conservator of the child victims listed in the information at issue, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Conversely, if the requestor is a parent, guardian, or managing

conservator of the child victims, then the city may not withhold the submitted information under section 552.101 of the Government Code on the basis of section 261.201(a). *Id.* § 261.201(k). Section 261.201(l)(2) states that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2). Thus, to the extent the requestor is a parent, guardian, or managing conservator of the child victims, we will consider whether any portion of the submitted information is excepted from disclosure.

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. *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 the requestor has a right of access to her own and her child's dates of birth under section 552.023 of the Government Code and this information may not be withheld from her under section 552.101 in conjunction with common-law privacy. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the requestor's own and her child's dates of birth, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the requestor is not a parent, guardian, or managing conservator of the child victims listed in the submitted report, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Conversely, if the requestor is a parent, guardian, or managing conservator of the child victims, then the city may not withhold the submitted information under section 552.101 of the Government Code on the basis of section 261.201(a), and, with the exception of the requestor's own and her child's dates of birth, must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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 'Jesse Harvey', with a long horizontal stroke extending to the right.

Jesse Harvey
Assistant Attorney General
Open Records Division

JHI/gw

Ref: ID# 804367

Enc. Submitted documents

c: Requestor
(w/o enclosures)