



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 25, 2019

Ms. Dayana Chavez
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2019-33247

Dear Mr. Chavez:

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# 798477 (ORR# 15548).

The Baytown Police Department (the "department") received a request for four specified incident reports. The department claims the submitted information is excepted from disclosure under sections 552.101 of the Government Code. We have considered the claimed exception 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 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 [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). The department asserts the submitted information was used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Upon review, we find the submitted information is within the scope of section 261.201(a). The department does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Accordingly, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* However, the requestor is a parent of the child victims at issue in Exhibit D. The requestor was suspected of committing the alleged or suspected abuse in incident report number 2018-55946. Thus, we determine the requestor does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k). Subsequently, the department must withhold incident report number 2018-55946 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* The requestor is not alleged to have committed the suspected abuse at issue in the remaining information. Hence, the department may not withhold the remaining information from the

requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l)(2) provides 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). Consequently, we must determine whether the remaining information is otherwise excepted from release under the Act.

Section 552.101 of the Government Code also encompasses sections 93.002 and 93.003 of the Family Code. Section 93.002 of the Family Code provides, “[a] written or oral communication between an advocate and a victim made in the course of advising, advocating for, counseling, or assisting the victim is confidential and may not be disclosed.” *Id.* § 93.002. Furthermore, section 93.003 of the Family Code provides as follows:

- (a) A victim has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication described by Section 93.002
- (b) The privilege may be claimed by:
 - (1) a victim or a victim’s attorney on a victim’s behalf;
 - (2) a parent, guardian, or conservator of a victim under 18 years of age; or
 - (3) an advocate or a family violence center on a victim’s behalf.

Id. § 93.003; *see also id.* § 93.001 (defining “advocate,” “family violence center,” and “victim”). Upon review, we find the department has not demonstrated any of the submitted information consists of a communication subject to section 93.002 of the Family Code. Accordingly, we find the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with sections 93.002 and 93.003 of the Family Code.

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 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 the *Industrial Foundation* decision. *Id.* at 683. 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.). The requestor has a right of access to his and his children’s private information, including dates of birth, pursuant to section 552.023 of the Government Code. *See Gov’t Code* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information

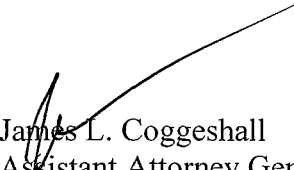
concerning themselves). Nevertheless, the department must withhold the remaining dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

In summary, the department must withhold Exhibit C and incident report number 2018-55946 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the dates of birth of the requestor and his children, the department must withhold the dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.¹

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 798477

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ Because the requestor has a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.