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ATTORNEY GENERAL OF TEXAS

November 26, 2019

Mr. Whitt L. Wyatt
Counsel for the City of Colleyville
Wood Banowsky PLLC
5201 Riverwalk Drive
Colleyville, Texas 76034

OR2019-33396

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# 798775 (Reference No. PD-19-0110).

The Colleyville Police Department (the "department"), which you represent, received a request for twelve points of information regarding interactions between the requestor, named individuals, and department employees, including certain reports and documents regarding the requestor. You state the department released some information to the requestor with redactions. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

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 made confidential by other statutes, such as section 261.201 of the Family Code. Section 261.201 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

¹ Although you do not raise section 552.147 of the Government Code in your brief, we understand you to raise this exception based on your markings.

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.

Fam. Code § 261.201(a), (k). You state report number 13CP040340 was used or developed in an investigation under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Additionally, we find some of the remaining information, which we marked, is within the scope of section 261.201(a). *See id.* We find the information at issue is subject to section 261.201(a) of the Family Code. We note the requestor is a parent of the child victims listed in the information at issue, but the requestor is alleged to have committed the abuse or neglect. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *Id.* § 261.201(k). You state the department has not adopted a rule that governs the release of this type of information. Therefore, we conclude the information at issue is confidential pursuant to section 261.201(a) of the Family Code. Accordingly, the department must withhold report number 13CP040340 and the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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 *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. 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, however, the requestor has a right of access to information pertaining to himself that would otherwise be confidential under common-law privacy. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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 individuals request information concerning themselves). Accordingly, the department must withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

Section 552.130 of the Government Code excepts 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. We note section 552.130 protects personal privacy. Thus, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. See *id.* § 552.023(a); ORD 481 at 4. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. However, upon review, we find the department may not withhold any of the remaining information under section 552.130.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. See Gov't Code § 552.147. We note the requestor has a right of access to his social security number and it must be released to him. See *generally id.* § 552.023(a). Therefore, the department may not withhold the social security number at issue under section 552.147 of the Government Code.

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides, “[n]otwithstanding any other provision of law to the contrary, including chapter 552, Government Code, except as provided by sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. Section 730.004 applies only to an “agency” that compiles or maintains motor

vehicle records. *See id.* § 730.003(1). Upon review, we find you failed to establish the department compiles or maintains motor vehicle records for purposes of chapter 730; therefore, you failed to demonstrate section 730.004 applies to the department, and, thus, the department may not withhold any portion of the remaining information on that basis.

In summary, the department must withhold report number 13CP040340 and the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the public citizens' dates of birth we marked 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.³

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 M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 798775

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); *see also* ORD 481 at 4. Accordingly, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.