



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Mr. David Overcash  
City Attorney for the City of Princeton  
Wolfe, Tidwell & McCoy, LLP  
2591 Dallas Parkway, Suite 300  
Frisco, Texas 75034

OR2019-36188

Dear Mr. Overcash:

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# 803906 (Ref. Nos. W019137-100219, W019138-100219, W019141-100219, W019142-100219).

The City of Princeton (the "city"), which you represent, received four requests from the same requestor for specified incident reports involving named individuals. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 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 411.192 of the Government Code, which governs the release of information maintained by DPS concerning the licensure of an individual to carry a handgun. Section 411.192 provides, in relevant part:

- (a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section

includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Gov't Code § 411.192(a)-(b). Upon review, we find the information you have marked consists of handgun license information obtained from DPS. In this instance, the requestor is neither the license holder nor a criminal justice agency. Thus, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code also 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 [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

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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). Upon review, we find case number 16-109080, case number 17-128674, and incident number 18161404 were used or developed in an investigation of alleged or suspected child abuse or neglect by the city. *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 victims listed in the information at issue 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 city 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 withhold the identifying information of the reporting parties, which we have also marked, 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.<sup>2</sup> However, we find the remaining information you have

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

marked does not identify a reporting party for purposes of section 261.201(1)(3) and may not be withheld under section 552.101 on that basis. In addition, section 261.201(1)(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(1)(2). Therefore, we will consider the city's remaining arguments for the remaining information.

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part:

(b) 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 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.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

(1) a juvenile justice agency, as defined by Section 58.101;

(2) a criminal justice agency, as defined by Section 411.082, Government Code;

(3) the child; or

(4) the child's parent or guardian.

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

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

*Id.* § 58.008(b), (d)-(e); *see also id.* § 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) is applicable 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). We find incident number 18058760 and incident number 18161404 involve juvenile offenders, 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 to incident number 18161404; therefore, the city must withhold incident number 18161404 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>3</sup> However, the requestor is a parent of one of the juvenile offenders in incident number 18058760. As such, the requestor has a right to inspect juvenile law enforcement records concerning this juvenile pursuant to section 58.008(d) of the Family Code. *See id.* § 58.008(d). However, section 58.008(e)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness for whom the requestor is not the authorized representative must be redacted. *See id.* § 58.008(e)(1). Thus, the city must withhold the information we have marked under section 58.008(e)(1) of the Family Code. Further, section 58.008(e)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.008(e)(2). Thus, we will consider your remaining arguments against disclosure of incident number 18058760.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1, of the Government

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

Code. See Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. We note, however, records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find the information we have marked consists of CHRI which the city must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.<sup>4</sup>

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 *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. 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.). A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. As previously noted, records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code* § 411.082(2)(B). We note the requestor has a right of access to her own and her minor children's private information. 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).

Upon review, we conclude some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note some

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<sup>4</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

of the information at issue pertains to individuals who will be de-identified and whose privacy interests are, thus, protected. Accordingly, with the exception of the requestor's and her minor children's dates of birth, the city must withhold all identified public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

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* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information you have marked and the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) and section 261.201(1)(3) of the Family Code. The city must withhold incident number 18161404 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The city must withhold the information we have marked under section 58.008(e)(1) of the Family Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. With the exception of the requestor's and her minor children's dates of birth, the city must withhold all identified public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information you have marked and the motor vehicle record information we have marked under section 552.130 of the Government Code. The city must release the remaining information.<sup>5</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

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<sup>5</sup> Because the requestor has a right of access to the information, the city must again seek a decision from this office if it receives a request for this information from a different requestor. *See* Fam. Code §§ 58.008(d), 261.201(k); Gov't Code § 552.023.

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 'Meredith L. Coffman', with a long horizontal line extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/mo

Ref: ID# 803906

Enc. Submitted documents

c: Requestor  
(w/o enclosures)