



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 18, 2020

Mr. Matthew L. Butler  
Counsel for the City of Bedford  
Boyle & Lowry, L.L.P.  
4201 Wingren Drive, Suite 108  
Irving, Texas 75062-2763

OR2020-04969

Dear Mr. Butler:

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# 812197.

The Bedford Police Department (the "department"), which you represent, received a request for specified police reports. 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 claimed exceptions and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we marked, is not responsive to the instant request because it is not part of one of the specified police reports. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.<sup>1</sup>

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. Section 552.101 encompasses information protected by 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 [chapter 261 of the Family Code] and the identity of the person

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<sup>1</sup> As we are able to make this determination, we need not address your arguments against its disclosure.

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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find some of the submitted information relates to investigations of alleged or suspected child abuse or neglect conducted by the department. *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); 101.003(a) (defining “child” for purposes of section 261.201 as a 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). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude the department must withhold Exhibit A and the reports we marked in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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

(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.

Fam. Code § 58.008(b); *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. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. 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

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

Code). Upon review, we find some of the remaining information involves 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. Accordingly, the department must withhold the remaining reports in Exhibit C under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>3</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state the reports in Exhibit B pertain to concluded criminal investigations that did not result in conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes the identities of complainants. *See id.* Thus, with the exception of basic information, the department may withhold the reports in Exhibit B under section 552.108(a)(2) of the Government Code.<sup>4</sup>

Section 552.101 of the Government 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 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.). Upon review, we find some of the remaining information, which we marked and indicated, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note some of the information at issue pertains to individuals who will be de-identified and whose privacy interests will, thus, be protected. Accordingly, the department must withhold the information we marked and indicated, and the dates of birth of identified public citizens, under section 552.101 of

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

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

the Government Code in conjunction with common-law privacy. However, we find the remaining information either pertains to de-identified individuals or is not highly intimate or embarrassing and not of legitimate public concern. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. You state the emergency communication district at issue is subject to section 772.218. Therefore, the department must withhold the originating telephone numbers of 9-1-1 callers under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code if the numbers were furnished by a 9-1-1 service provider.

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>5</sup> Gov't Code § 552.1175. The information we marked consists of the home address of an individual who may be among the types of individuals listed in section 552.1175(a). Thus, if the information we marked relates to an individual to whom section 552.1175 applies and the individual elects to restrict access to this information in accordance with section 552.1175(b), then the department must withhold the information we marked under section 552.1175.

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 id.* § 552.130. Accordingly, we find the department must withhold the license plate numbers and states in the remaining information under section 552.130 of the Government Code.

In summary, the department must withhold Exhibit A and the reports we marked in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the remaining reports in Exhibit C under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of basic information, the department may withhold the reports in Exhibit B under section 552.108(a)(2) of the Government Code.

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<sup>5</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 (1987), 480 (1987), 470 (1987).

The department must withhold the information we marked and indicated, and the dates of birth of identified public citizens, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the originating telephone numbers of 9-1-1 callers under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code if the numbers were furnished by a 9-1-1 service provider. If the information we marked relates to an individual to whom section 552.1175 of the Government Code applies and the individual elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, then the department must withhold the information we marked under section 552.1175 of the Government Code. The department must withhold license plate numbers and states in the remaining information under section 552.130 of the Government Code. The department must release the remaining responsive information.

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

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/mo

Ref: ID# 812197

Enc. Submitted documents

c: Requestor  
(w/o enclosures)