



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 25, 2020

Ms. Kristen Mills
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2020-05909

Dear Ms. Mills:

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# 813413 (PIR# 16325).

The Baytown Police Department (the "department") received a request for a specified incident report. We understand you will release some information to the requestor upon payment of costs. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.152 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 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." Fam. Code § 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 you have 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 submitted 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 section 261.201(a) of the Family Code, which provides as follows:

[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.

Id. § 261.201(a). You assert portions of the submitted information are confidential under section 261.201. Upon review, we find some of the information at issue, which we have marked, was used or developed in an investigation of alleged or suspected child abuse or neglect by the Child Protective Services Division of the Texas Department of Family and Protective Services. *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. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ However, we find you have not established any portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code or consists of a report of alleged or suspected abuse or neglect. *See id.* §§ 101.003(a), 261.001(1), (4). Therefore, no portion of the remaining information is confidential under

¹ As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

section 261.201(a) of the Family Code and the department may not withhold it under section 552.101 of the Government Code on that ground.

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. *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 the requestor has a right of access to his own date of birth pursuant to section 552.023 of the Government Code, and this information may not be withheld from him under common-law privacy. *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). Accordingly, the department must withhold the dates of birth you have marked and the additional date of birth we have marked under section 552.101 of the Government Code in conjunction with 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, with the exception of the information we have marked for release, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. Upon review, however, we find the information we have marked for release does not consist of motor vehicle record information subject to section 552.130 of the Government Code. Therefore, the department may not withhold the information we have marked for release under section 552.130 of the Government Code.

Section 552.152 of the Government Code provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You represent the release of the undercover officers' identities would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the information at issue. Accordingly, the department must withhold the identifying information of the undercover officers, which you have marked, under section 552.152 of the Government Code.

In summary, the department must: (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (2) withhold the dates of birth you have marked and the additional date of birth we have marked under section 552.101 of the Government Code in conjunction with

common-law privacy; (3) withhold the motor vehicle record information you have marked, with the exception of the information we have marked for release, under section 552.130 of the Government Code; (4) withhold the identifying information of the undercover officers, which you have marked, under section 552.152 of the Government Code; and (5) release the remaining information to this requestor.²

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/be

Ref: ID# 813413

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note the requestor has a right of access to some of the information being released under section 552.023 of the Government Code. See Gov't Code § 552.023(a); 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.