



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 26, 2020

Ms. Delietrice Henry  
Open Records Assistant  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2020-06172

Dear Ms. Henry:

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# 813908 (ORR# P005509-120319).

The Plano Police Department (the "department") received a request for information involving three named individuals. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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:

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). You assert the submitted information was used or developed in investigations of alleged or suspected child abuse or neglect 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). Upon review, we find the submitted information is within the scope of section 261.201(a). You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find incident report number 2016-00158167 is generally confidential under section 261.201(a) of the Family Code. Nevertheless, we note section 261.201 of the Family Code provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this regard.

However, in this instance, the requestor represents the Dallas County Domestic Relations Office and states he is conducting a court-ordered social study, and, thus, may have a right

of access to portions of incident report number 2016-00158167 pursuant to section 411.1285 of the Government Code. Section 411.1285(a) provides in part, “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.”<sup>2</sup> See Gov’t Code § 411.1285(a); see also Fam. Code ch. 203 (governing administration of domestic relations offices). In addition, section 411.087(a) of the Government Code provides, in pertinent part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov’t Code § 411.087(a)(2). “Criminal history record information” is defined as “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.” See *id.* § 411.082(2). Thus, the information at issue contains “criminal history record information.” However, a domestic relations office may only receive criminal history record information if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. See *id.* § 411.1285(c); see also Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

As noted above, the requestor states he is conducting a court-ordered social study regarding the individuals named in the request for information. See Fam. Code § 107.051 (b) (domestic relations office may perform court-ordered social study). Therefore, if the department determines incident report number 2016-00158167 relates to persons who are parties to a proceeding in which the requestor is providing services permitted under chapter 203 of the Family Code and release of the information is consistent with the Family Code, then the department must make available to the requestor information from report number 2016-00158167 that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions and withhold the remaining information in incident report number 2016-00158167 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, the department must withhold incident report number

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<sup>2</sup> A “domestic relations office” is defined as “a county office that serves families, county departments, and courts to ensure effective implementation of this title.” Fam. Code § 203.001(2).

2016-00158167 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code if it determines either the information is not related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or disclosure of the information is not consistent with the Family Code. *See id.* § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information); *see also* Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); Open Records Decision No. 440 at 2 (1986).

Furthermore, we note the requestor provided a signed authorization from the child victim in incident report number 2012-00067990, who is now an adult, and, thus, we find this individual is an authorized representative of the minor victim in incident report number 2012-00067990. Thus, the department may not withhold incident report number 2012-00067990 from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, section 261.201(l)(3) provides the identity of the reporting party must be withheld. Therefore, the department must withhold the identifying information of the reporting party in incident report number 2012-00067990, which we have marked, under section 552.101 of the government Code in conjunction with section 261.201(l)(3) of the Family Code. In addition, section 261.201(l)(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(l)(2). Thus, we must determine whether the remaining information in incident report number 2012-00067990 is otherwise excepted from release under the Act.

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.). The requestor has a right of access to his clients' otherwise private information, including dates 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). In addition, we note one of the individuals whose date of birth is at issue has been de-identified pursuant to section 261.201(l)(3) of the Family Code. Therefore, the privacy interest in their date of birth is sufficiently protected, and the department may not withhold it under common-law privacy. Nevertheless, the department must withhold the dates of birth belonging to identifiable individuals other than the requestor's clients in incident report number 2012-00067990 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.<sup>3</sup> See Gov't Code § 552.130. We note, because section 552.130 protects privacy interests, the requestor has a right of access to his clients' motor vehicle record information pursuant to section 552.023 of the Government Code. See *id.* § 552.023(a); ORD 481 at 4. Upon review, we find the department must withhold the motor vehicle record information we have marked in incident report number 2012-00067990 under section 552.130 of the Government Code.

In summary, if the department determines incident report number 2016-00158167 relates to persons who are parties to a proceeding in which the requestor is providing services permitted under chapter 203 of the Family Code and release of the information is consistent with the Family Code, then the department must make available to the requestor CHRI from report number 2016-00158167 and withhold the remaining information in incident report number 2016-00158167 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, the department must withhold incident report number 2016-00158167 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code if it determines either the information is not related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or disclosure of the information is not consistent with the Family Code. The department must withhold the identifying information of the reporting party in incident report number 2012-00067990, which we have marked, under section 552.101 of the government Code in conjunction with section 261.201(1)(3) of the Family Code. The department must withhold the dates of birth belonging to identifiable individuals other than the requestor's clients in incident report number 2012-00067990 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked in incident report number 2012-00067990 under section 552.130 of the Government Code. The department must release the remaining information in incident report number 2012-00067990 to this requestor.<sup>4</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>3</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, 480 (1987), 470 (1987).

<sup>4</sup> We note the requestor has a right of access to some of the information being released. See Fam. Code § 261.201(k); Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

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 "Tim Neal". The signature is stylized with a large, sweeping initial "T" and a cursive "Neal".

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/eb

Ref: ID# 813908

Enc. Submitted documents

c: Requestor  
(w/o enclosures)