



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2020

Mr. Mark G. Mann
Senior Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2020-13216

Dear Mr. Mann:

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# 827419 (GCA20-190, GCA20-191, GCA20-192, GCA20-193, and GCA20-194).

The Garland Police Department (the "department") received five requests from different requestors for a specified incident report. You state you have released some information to the requestors. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."¹ 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:

¹ 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).

(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). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse by the department 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). Thus, 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 rule exists. Given that assumption, the department must withhold the submitted information in its entirety from the first, second, third, and fifth requestors under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² However, the fourth requestor is the child victim listed in the information at issue. Thus, the department may not withhold the submitted information from the fourth requestor on the basis of section

² As our ruling is dispositive, we do not address your argument to withhold this information from these requestors.

261.201(a). *See id.* § 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, which we have marked, from the fourth requestor 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). Accordingly, we will address your argument against disclosure with respect to the fourth requestor.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to an ongoing criminal investigation. Based on this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information. Accordingly, the department may withhold the information you have marked from the fourth requestor under section 552.108(a)(1) of the Government Code.

You state you will withhold public citizens' dates of birth pursuant to Open Records Letter No. 2017-22182 (2017).³ 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 court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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 fourth requestor has a right of access to his own date of birth pursuant section 552.023 of the Government Code and it may not be withheld from him under section 552.101 in conjunction with common-law privacy. *See* Gov’t Code § 552.023(a); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). We further note one of the dates of birth at issue relates to an individual who will be de-identified pursuant to section 261.201(l)(3) of the Family Code, and whose privacy interests are, thus, protected. Accordingly, the department may not withhold this individual's date of birth under section 552.101 in conjunction with common-law privacy. Nevertheless, the department must withhold the dates of birth belonging to identifiable public citizens other than the fourth requestor from the fourth requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

³ Open Records Letter No. 2017-22182 authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. *See* Gov’t Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

In summary, the department must withhold the submitted information in its entirety from the first, second, third, and fifth requestors under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the identifying information of the reporting party, which we have marked, from the fourth requestor under section 552.101 of the government Code in conjunction with section 261.201(1)(3) of the Family Code and may withhold the information you have marked from the fourth requestor under section 552.108(a)(1) of the Government Code. The department must withhold the dates of birth belonging to identifiable public citizens other than the fourth requestor from the fourth requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information to the fourth requestor.⁴

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/mo

Ref: ID# 827419

Enc. Submitted documents

c: 5 Requestors
(w/o enclosures)

⁴ We note the fourth requestor has a right of access to the information being released. See Fam. Code § 261.201(k); Gov't Code § 552.023(a); ORD 481 at 4. If the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).