



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2020

Mr. L. Brian Narvaez
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2020-13449

Dear Mr. Narvaez:

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# 830439 (ID No. P014191).

The City of McKinney (the "city") received a request for all reports from a specified location during a specified time period.¹ You state you released some information. The city states it is withholding some of the requested information pursuant to Open Records Letter No. 2018-07366 (2018).² 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 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

¹ You state, and provide documentation demonstrating, the city sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the city received the required deposit on March 6, 2020. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

² Open Records Letter No. 2018-07366 authorizes the city to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

Code § 552.101. This section 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.

Fam. Code § 261.201(a). You state portions of the submitted information are subject to section 261.201 of the Family Code. Upon review, we find reports 16-009220, 16-003002, and 17-042904 were used or developed in investigations of alleged or suspected child abuse or neglect conducted by the city's police 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 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the city's police department has adopted a rule that governs the release of this type of information and therefore, we assume no such regulation exists. Given that assumption, we conclude the city must withhold reports 16-009220, 16-003002, and 2017-042904 pursuant to section 552.101 in conjunction with section 261.201 of the Family Code.³

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 and 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 As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(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.

Id. § 58.008(b); *see also id.* § 51.03(a) (defining “delinquent conduct” 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 Code). Further, section 58.008 does not make information related to traffic offenses confidential. *See id.* §§ 51.02(16) (defining traffic offense), .03(a) (delinquent conduct for purposes of title 3 of Family Code does not include traffic offenses), .03(b) (conduct indicating a need for supervision does not include traffic offense). Upon review, we find some of the information at issue involves delinquent conduct or conduct indicating a need for supervision of a child. It does not appear any of the exceptions in section 58.008 apply. Thus, the city must withhold reports 17-004067, 17-043818, and 2017-113857 under section 552.101 in conjunction with section 58.008(b) of the Family Code. However, we are unable to determine the ages of the suspects listed in some of the remaining information at issue. Accordingly, if any suspect listed in reports 2017-017846 and 2017-065653 was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the city must withhold reports 2017-017846 and 2017-065653 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, if no suspect was ten years of age or older and under seventeen years of age at the time of the conduct, then the information does not involve juvenile conduct for purposes of section 58.008(b) of the Family Code, and no portion of reports 17-017846 or 2017-065653 may be withheld under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. Further, report 2016-078649 relates to a traffic offense. Therefore, we find the city has not demonstrated the applicability of section 58.008(b) of the Family Code to any of this report, and the city may not withhold it under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.⁴

Section 552.101 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). Upon review, we find some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information you marked,

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

and we marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses the informer's privilege, which has long been recognized by Texas courts. *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). However, the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978).

You state Exhibit D-2 reveals the identity of a complainant who reported a possible violation of criminal law to the city's police department. We have no indication the subject of the complaint knows the identity of the complainant. Based on your representations and our review, we conclude you have demonstrated the applicability of the informer's privilege to the information you marked. Accordingly, the city may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

You state you will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.⁵ We note the remaining information contains additional motor vehicle record information. 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the city must withhold the information you marked and the additional information we marked under section 552.130 of the Government Code.

In summary, the city must withhold reports 16-009220, 16-003002, and 2017-042904 pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. The city must withhold reports 17-004067, 17-043818, and 2017-113857 under section 552.101 in conjunction with section 58.008(b) of the Family Code. If any suspect listed in reports 2017-017846 and 2017-065653 was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the city must withhold reports 2017-017846

⁵ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

and 2017-065653 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 you marked, and we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the information you marked and the additional information we marked under section 552.130 of the Government Code. The remaining information must be released.

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,

Melanie Villars
Assistant Attorney General
Open Records Division

MJV/be

Ref: ID# 830439

Enc. Submitted documents

c: Requestor
(w/o enclosures)