



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 27, 2020

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

OR2020-18680

Dear M [Last Name]:

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# 836968 (ORR No. P008558).

The City of Plano (the "city") received a request for all information pertaining to a named individual. You state the city released some information. 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. Section 552.101 encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides in part:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and

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<sup>1</sup> We assume 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.

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.

...

(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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(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). Upon review, we find the submitted information was used or developed in investigations of alleged or suspected child abuse for purposes of section 261.201. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of Family Code); *see also 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 disabilities of minority removed for general purposes). Accordingly, we find this information is subject

to chapter 261 of the Family Code. In this instance, the requestor is the authorized representative of the named individual who is a parent of the child victim listed in the information at issue. The named individual is not alleged to have committed the abuse or neglect in report numbers 2016-00156716 and 2018-00068350. Thus, pursuant to section 261.201(k), the city may not withhold report numbers 2016-00156716 and 2018-00068350 from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). However, we note the city was not the investigating agency with respect to the matters at issue in report number 2016-00156716. Thus, the requestor does not have a right of access to report number 2016-00156716 under section 261.201(k). *See id.* Therefore, the city must withhold report number 2016-00156716 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, with regard to report number 2018-00068350, section 261.201(l)(2) states a governmental body must redact any information that is excepted from required disclosure under the Act or other law. *See id.* § 261.201(l)(2). Accordingly, we will consider whether this information is otherwise excepted under the Act.

We note the named individual is alleged to have committed the suspected abuse or neglect in the remaining information. Thus, the requestor does not have a right of access to the remaining information under section 261.201(k). *See id.* § 261.201(k). Accordingly, the remaining information must be generally withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

However, we note the requestor is a representative of the Richardson Police Department and may have a right of access to some of the information pursuant to chapter 411 of the Government Code. Chapter 411 is applicable state law for the purposes of section 261.201. Section 411.089(a) of the Government Code provides a criminal justice agency is entitled to obtain from the Texas Department of Public Safety (“DPS”) any criminal history record information (“CHRI”) maintained by the DPS about a person. *See Gov’t Code* § 411.089(a); *see also id.* § 411.083(b)(1) (DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides, in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or subchapter E-1 to obtain from [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

*Id.* § 411.087(a)(2). CHRI 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 CHRI of the named individual. However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may receive such information only for a criminal

justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision Nos. 655 (1997) (discussing limitations on release of CHRI). Thus, to the extent the requestor represents a “criminal justice agency,” the requestor is authorized to obtain CHRI from the city pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose and, with respect to the information subject to section 261.201 of the Family Code, for purposes consistent with the Family Code. *See* Gov’t Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a).

Section 411.082 of the Government Code defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” Gov’t Code § 411.082(3)(A). The requestor represents a criminal justice agency as defined by section 411.082 and states the information at issue will be used for criminal justice purposes. However, we are unable to determine whether the requestor intends to use the CHRI for purposes consistent with the Family Code. Consequently, if the city determines the requestor intends to use the CHRI for purposes consistent with the Family Code, then the city must release CHRI and must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the city determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the city must withhold the remaining information in its entirety pursuant to section 552.101 in conjunction with section 261.201(a). *See* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute).

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.). Additionally, we note the information at issue includes the named individual’s and the named individual’s child’s dates of birth. The requestor has a right of access to this information. *See* Gov’t Code § 552.023 (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the city must withhold all dates of birth not belonging to the named individual or her child under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold report number 2016-00156716 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With regard to report number 2018-00068350, the city must withhold all dates of birth not belonging to the named individual or her child under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release CHRI and must

withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code if the city determines the requestor intends to use the CHRI for purposes consistent with the Family Code. If the city determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the city must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

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,

Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/mo

Ref: ID# 836968

Enc. Submitted documents

c: Requestor  
(w/o enclosures)