



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2020

Ms. Andrea D. Russell
Counsel for the City of Saginaw
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2020-20791

Dear Ms. Russell:

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# 842397 (ORR# 472-2020; 476-2020; 478-2020; 480-2020; 481-2020).

The City of Saginaw (the "city"), which you represent, received a request from a first requestor (the "first requestor") for information pertaining to a named individual; a request from a second requestor (the "second requestor") for information pertaining to the second requestor and two named individuals; and a third request from an individual and the individual's attorney (collectively, the "third requestor") for incident report number 2000009807. The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions 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. 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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in

courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The first requestor asks for all information held by the city concerning a named individual. Therefore, to the extent the city maintains any unspecified law enforcement information depicting this named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The second requestor asks, in part, for all information held by the city concerning two named individuals. Therefore, to the extent the city maintains any unspecified law enforcement information depicting either of these named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has submitted documents that do not list any of the named individuals as a suspect, arrestee, or criminal defendant. In addition, the second requestor also asks for information pertaining to herself. Because the second requestor specifically asks for this information, it is not part of a compilation of any of the named individual's criminal history. Thus, this information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also 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) 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.

Fam. Code § 261.201(a), (k). Upon review, we find incident report number 2000005363 was used or developed in an investigation by the city's police department 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). Thus, this information is within the scope of section 261.201(a). Although the first requestor is a parent of the child victim, this requestor was suspected of committing the alleged or suspected abuse. Therefore, we determine this requestor does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k). Accordingly, the city must withhold incident report number 2000005363 from the first and second requestors under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. 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.). Each requestor has a right of access to the date of birth of that requestor pursuant to section 552.023 of the Government Code. *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).* The first and third requestors each has a right of access to the date of birth of that requestor's child pursuant to section 552.023. Thus, the city must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy, with the exception of those that a requestor has a right of access under section 552.023 of the Government Code.

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. We note section 552.130 protects personal privacy for purposes of section 552.023 of the Government Code. *See id.* § 552.023(a); *ORD 481 at 4.* Therefore, the city must withhold the submitted driver's license and license plate numbers and issuing state under section 552.130 of the Government Code, unless a requestor has a right of access to such information under section 552.023 of the Government Code.

In summary, to the extent the city maintains any unspecified law enforcement information depicting the individual named by the first requestor as a suspect, arrestee, or criminal defendant, the city must withhold such information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the city maintains any unspecified law enforcement information depicting either of the individuals named by the second requestor as a suspect, arrestee, or criminal defendant, the city must withhold such information from the second requestor under section 552.101 of

the Government Code in conjunction with common-law privacy. The city must withhold incident report number 2000005363 from the first and second requestors under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the information to which each requestor has a right of access under section 552.023 of the Government Code, the city must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy and the submitted driver's license and license plate numbers and issuing state under section 552.130 of the Government Code. The city must release the remaining information that is responsive to each of the requests to that requestor.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/be

Ref: ID# 842397

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)