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ATTORNEY GENERAL OF TEXAS

September 8, 2020

Mr. Joe Shumate
Counsel for the City of Henderson
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P.O. Box 1915
Henderson, Texas 75653-1915

OR2020-22580

Dear Ms. Harden:

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# 843522.

The City of Henderson (the "city"), which you represent, received a request for information pertaining to a specified address from specified time periods. We have reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses information protected by 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 Chapter 552, Government Code, 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

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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 some of the submitted information was used or developed in investigations by the city's police department of alleged or suspected child abuse or neglect. *See 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 the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. Although the requestor is a parent of the child victims listed in the information at issue. Further, we note the requestor is alleged to have committed the suspected abuse or neglect. Thus, the requestor does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k). Therefore, the city must withhold this information, which we marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

Section 552.101 of the Government Code also 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)*. 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.). We note the requestor has a right of access to her private information and date of birth. *See Gov't Code § 552.023(a)* ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is 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 herself). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, with the exception of the requestor's date of birth, the city must withhold all public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code provides, in relevant part, as follows:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information;

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Some of the remaining information relates to an individual who may be licensed peace officer and the information is not held in an employment context. However, we are unable to determine from the information provided if the individual at issue is currently a licensed peace officer. Thus, we must rule conditionally. Accordingly, to the extent it relates to an individual who is currently a licensed peace officer and who elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold the information we marked under section 552.1175 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Upon review, we find the city must withhold the information we marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the requestor's date of birth, the city must withhold all public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent it relates to an individual who is

currently a licensed peace officer and who elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold the information we marked under section 552.1175 of the Government Code. The city must withhold the information we marked under section 552.130 of the Government Code. The city must release the remaining information.²

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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/jm

Ref: ID# 843522

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As noted above, the requestor has a special right of access under section 552.023 of the Government Code to some of the information being released. *See* Gov't Code § 552.023(b); ORD 481 at 4. Therefore, if the city receives another request for this information from a person who does not have a special right of access to this information, the city should again seek a ruling from this office. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001). Additionally, we note the information being released contains social security numbers to which the requestor does not have a right of access. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).