



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 27, 2020

Mr. Kevin Bailey  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79701

OR2020-26830

Dear Mr. Bailey:

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# 850512 (ORR Nos. M031031, M031034, and M031084).

The City of Midland (the "city") received three requests from the same requestor for reports pertaining to the requestor and four named individuals as well as eleven specified reports. You state the city has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code § 552.301(b)*. In the first request, which the city received on August 3, 2020, the requestor asks for any reports pertaining to the requestor and a named individual. In response, the city submitted a request for a ruling raising, in pertinent part, section 552.101 of the Government Code for report number 181108012 on August 17, 2020. In the third request, which the city received on August 6, 2020, the requestor asks for three specified reports. In response to the third request, the city submitted a request for a ruling raising 552.108 of the Government Code for report number

181108012 on August 20, 2020. Upon review of the requests and the submitted information, we find report number 181108012 was responsive to the first request for information. We note that, based on the date the city received the first request, the ten-business day deadline to state the exceptions at issue required by section 552.301(b) of the Government Code was August 17, 2020. However, the city did not raise section 552.108 for report number 181108012 until August 20, 2020. Thus, the city failed to comply with section 552.301(b) of the Government Code with respect to its claim under section 552.108 of the Government Code for report number 181108012.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). As the city failed to comply with section 552.301(b) in raising section 552.108 for report number 181108012, we find the city has failed to establish a compelling reason to address its claim under this section. Accordingly, the city may not withhold any portion of report number 181108012 under section 552.108 of the Government Code. However, we will address your timely-raised argument under section 552.101 against disclosure for report number 181108012. Further, because sections 552.130, 552.136, and 552.137 of the Government Code can make information confidential, we will address the applicability of these sections to report number 181108012.<sup>1</sup> Additionally, we will address your arguments against disclosure for the remaining 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 (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

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<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Upon review, we find the present request requires, in part, the city to compile unspecified law enforcement records concerning a named individual. We find this part of the request implicates the named individual's right to privacy. However, we note the requestor also seeks information involving herself and her minor children. This part of the request seeks specified records involving the requestor and her minor children and does not implicate the named individual's right to privacy. Additionally, the requestor has a special right of access to her own information and information pertaining to her minor children that would ordinarily be withheld to protect their privacy interests. *See* Gov't Code § 552.023(a)-(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, with the exception of law enforcement records involving the requestor and her minor children, to the extent the city maintains law enforcement records depicting the other named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, the city has submitted law enforcement records that either involve the requestor or her minor children or do not list the other named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individuals' criminal histories, and the city may not withhold it under section 552.101 in conjunction with common-law privacy on that basis. Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides, in relevant part:

(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 . . . 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 agree the some of the information at issue was used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *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 of Family Code). You do not indicate the city has adopted any rules that would permit the release of the information at issue. Accordingly, we find the information is subject to chapter 261 of the Family Code. Therefore, we conclude the information we marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, in some of the information at issue, the requestor is a parent of the alleged child victim at issue and is not accused of committing the alleged or suspected child abuse or neglect. Therefore, the city may not withhold this information from the requestor on the basis of section 261.201(a) of the Family Code. *See id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(l)(3). Accordingly, we find the city must withhold the identifying information of the reporting party, which we marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Moreover, 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).

Further, upon review, we find you have failed to demonstrate the remaining information at issue is a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4). Therefore, we conclude section 261.201 is not applicable to the remaining information at issue, and it may not be withheld on that basis.

As stated above, section 552.101 of the Government of the Code encompasses the doctrine of common-law privacy. 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. *Indus. Found.*, 540 S.W.2d 668 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 requestor has a right of access to her own date of birth and the dates of birth of her minor children pursuant to section 552.023 of the Government Code. *See Gov't Code* § 552.023(a); ORD 481 at 4. We note one of the dates of birth of a public citizen in the remaining information pertains to an individual who has been de-identified; thus, this individual's privacy interest is protected. Thus, with the exception of the requestor's date of birth and the dates of birth of her minor children, the city must withhold all dates of birth pertaining to individuals who have not been de-identified under section 552.101 of the Government Code in conjunction with common-law privacy.

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 privacy interests. Accordingly, the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. However, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Gov't Code* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the city must withhold the bank account and routing numbers we marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the city must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

In summary, with the exception of law enforcement records involving the requestor and her minor children, to the extent the city maintains unspecified law enforcement records depicting the named individual's as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold the identifying information of the reporting party, which we marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. With the exception of the requestor's date of birth and the dates of birth of her minor children, the city must withhold all dates of birth pertaining to individuals who have not been de-identified under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must withhold the bank account and routing numbers we marked under section 552.136 of the Government Code. The city must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. The city must release the remaining information.<sup>2</sup>

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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/rm

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<sup>2</sup> We note the remaining information contains a social security number that does not belong to the requestor. 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). We note the requestor has a right of access to some of the information being released. *See* Fam. Code § 261.201(k); Gov't Code § 552.023(a); ORD 481 at 4. Thus, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)