



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 1, 2022

Ms. Derenda Rush
Records Division
Amarillo Police Department
200 South East Third Avenue, 4th Floor
Amarillo, Texas 79101-1514

OR2022-03020

Dear Ms. Rush:

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# 928262 (References Nos. 21-3507 and 21-3513).

The Amarillo Police Department (the "department") received two requests from the same requestor for specified incident reports. 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 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). Upon review, we find incident report number 2017-0525937 was used or developed in an investigation of alleged 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 of Family Code). Thus, this information is within the scope of section 261.201 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the department must generally withhold incident report number 2017-0525937 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).

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. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). 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.). Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must generally withhold the date of birth of the identifiable public citizen and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information pertains to individuals who have been deidentified. Thus, their privacy interests are protected and the information may not be withheld under section 552.101 in conjunction with common-law privacy. Additionally, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In this instance, the requestor is a representative of the United States Department of Health and Human Services Office of Inspector General (the “inspector general’s office”). The requestor explains she is seeking the requested records in accordance with section 4(a)(1) of the Inspector General Act of 1978 (the “IG Act”), 5 U.S.C. app. 3. *See* 5 U.S.C. App. 3 § 4(a)(1) (describing duties and responsibilities of each Inspector General to “conduct,

supervise, and coordinate audits and investigations relating to the programs and operations of [the establishment within which each Inspector General's office is established]"). Section 6 of the IG Act provides, in relevant part, the following:

(a) In addition to the authority otherwise provided by this [IG] Act, each Inspector General, in carrying out the provisions of this [IG] Act, is authorized—

(1)(A) to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the applicable establishment which relate to the programs and operations with respect to which that Inspector General has responsibilities under this [IG] Act[.]

Id. § 6(a)(1)(A). Thus, subsection (a)(1)(A) of section 6 of the IG Act may grant the requestor a statutory right of access to the information at issue. We note federal law provides the inspector general's office's right of access preempts state confidentiality provisions, including section 261.201 of the Family Code. *Id.* § 9101(b)(4) (section 9101 "shall apply notwithstanding any other provision of law of any State"); *see also English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (state law is preempted to extent it actually conflicts with federal law); *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369, (1986) (federal agency acting within scope of its congressionally delegated authority may preempt state regulation). We also note a statutory right of access prevails over the common law and the Act's general exceptions to public disclosure. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *see also Open Records Decision Nos.* 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Although the requestor states she is seeking the requested records in accordance with subsection (a)(1) of section 4 the IG Act, the requestor does not specifically state whether the information is related to the "programs and operations" to which the requestor's office has responsibilities under the IG Act. *See* 5 U.S.C. App. 3 § 6(a)(1)(A). Thus, we are unable to determine whether subsection (a)(1)(A) of section 6 of the IG Act grant the requestor a statutory right of access to the information at issue, and we must rule conditionally. If the department determines the information is related to the "programs and operations" to which the requestor's office has responsibilities under the IG Act, then we find the requestor has a statutory right of access to the information at issue and the submitted information must be released to this requestor in its entirety. Otherwise, the department must withhold incident report number 2017-0525937 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code and the identifiable public citizen's date of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

Jahna Ward
Assistant Attorney General
Open Records Division

JW/be

Ref: ID# 928262

Enc. Submitted documents

c: Requestor
(w/o enclosures)