



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2022

Mr. Adam Anderson
Assistant County Attorney
Montgomery County
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2022-22073

Dear Mr. Anderson:

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# 962354 (File Nos. 22PIA236 and 22PIA251).

The Montgomery County Constable's Office, Precinct 1 (the "constable's office") received two requests from different requestors for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the obligations of the constable's office 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), a 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 constable's office received on May 17, 2022, the requestor asks for a police report pertaining to the specified incident. In response, the constable's office submitted a request for a ruling raising sections 552.101 and 552.130 of the Government Code for portions of the police report. In the second request, which the constable's office received on May 24, 2022, a different requestor asks for the same police report and additional documents related to the same incident. In response to the second request, the constable's office submitted a request for a ruling raising section 552.108 of the Government Code for the previously submitted police report as well as the additional documents.

Upon review of the requests and the submitted information, we find the police report was responsive to the first request for information. We note that, based on the date the constable's office 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 June 1, 2022. However, the constable's office did not raise section 552.108 for the information at issue until June 2, 2022. Thus, the constable's office 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 the police report at issue.

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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). As the constable's office failed to comply with section 552.301(b) in raising section 552.108 for the police report, we find the constable's office has failed to establish a compelling reason to address its claim under this section. Accordingly, the constable's office may not withhold the police report under section 552.108 of the Government Code. However, we will address your argument under section 552.108 of the Government Code for the additional documents. In addition, we will also address your timely-raised arguments under sections 552.101 and 552.130 of the Government Code against disclosure of police report.

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 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.

(1) 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 or the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (1)(2). Upon review, we find the submitted information, which pertains to three child victims, was used or developed in an investigation of alleged or suspected child abuse 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 subject to section 261.201 of the Family Code. You do not indicate the constable’s office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the constable’s office must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ *See Open Records Decision No.440 at 2 (1986) (predecessor statute).* However, the second requestor is an attorney for the parents of the victims and the parents are not alleged to have committed the alleged abuse. Thus, the constable’s office may not withhold the submitted information from the second requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(1)(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(1)(2). Therefore, we will consider whether the information at issue is otherwise excepted from disclosure under the Act.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The constable’s office states the information at issue pertains to a pending criminal investigation. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City*

¹ As our ruling is dispositive, we need not address the arguments against disclosure of this information.

of Houston, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information we marked. Therefore, the constable's office may withhold the information we marked under section 552.108(a)(1) of the Government Code.

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 doctrine of the common-law 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 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 second requestor has a right of access to the dates of birth pertaining to his clients and their minor children under section 552.023 of the Government Code. *See Gov't Code* § 552.023(a) (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 individuals request information concerning themselves). Thus, with the exception of the dates of birth pertaining to the second requestor's clients and their minor children, the constable's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure 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. *See Gov't Code* § 552.130. Therefore, the constable's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the constable's office must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The constable's office may withhold the information we marked under section 552.108(a)(1) of the Government Code. With the exception of the dates of birth pertaining to the second requestor's clients and their minor children, the constable's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The constable's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The constable's office must release the remaining information to the second 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/be

Ref: ID# 962354

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)