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ATTORNEY GENERAL OF TEXAS

September 23, 2022

Ms. Amanda Davis
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2022-29569

Dear Ms. Davis:

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# 973959 (City ID Nos. P23769, P23770, and P23869).

The City of McKinney and the McKinney Police Department (collectively, the "city"), which you represent, received three requests from two different requestors for information related to specified incidents. 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 note the second requestor only seeks information related to one of the specified incidents. Accordingly, the information you have submitted as Exhibit C is not responsive to the second requestor. This ruling does not address the public availability of any information that is not responsive to the request at issue and the city is not required to release non-responsive information to the second requestor.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either statutory, constitutional, or by judicial decision." Gov't Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides, as follows:

(a) Except as provided by Section 261.203, the 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 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.

(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 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 find the submitted information was used or developed in investigations of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261); *see also 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 disabilities of minority removed for general purposes). Accordingly, we find this information is subject to chapter 261 of the Family Code. We note the second requestor is a parent of one of the child victims at issue and this individual is not alleged to have committed the suspected abuse or neglect. Accordingly, the city may not withhold the responsive information from the second requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Additionally, we note the first requestor may be a parent, guardian, or managing conservator of one of the child victims listed in the submitted information, and the first requestor is not alleged to have committed the abuse or neglect. As such, this requestor may have a right of access to the information at issue pursuant to section 261.201(k). *See id.* As we are unable to determine whether the first requestor is a parent, guardian, or managing conservator of the child victim, we must rule conditionally. If the first requestor is not a parent, guardian, or managing conservator of the child victim listed in the information at issue, then the city 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). Conversely, if the first requestor is a parent, guardian, or managing conservator of the child victim at issue, then the city may not withhold the submitted information from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See* Fam. Code § 261.201(k).

We note section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(l)(3). Accordingly, the city must withhold the identity of the reporting parties, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.² Furthermore, section 261.201(l)(1) states any personally identifiable information about a victim or witness who is under 18 years of age and is not the child of the parent, managing conservator, or other legal representative requesting the information shall be withheld from disclosure. *Id.* § 261.201(l)(1). Accordingly, if the first requestor is a parent, guardian, or managing conservator of the child victim at issue, the city must withhold the personally identifiable information of the juvenile victim who is not the child of the first requestor, which we have marked, under section 552.101 of the Government Code in conjunction with section

¹ In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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261.201(l)(1) of the Family Code.³ Additionally, 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). Accordingly, we will consider whether the information at issue is otherwise excepted from disclosure.

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). You state Exhibit B pertains to an open criminal investigation. Based on 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 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 at issue.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the remaining basic information, the city may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code.

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. 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. *Paxton v. City of Dallas*, No.

³ In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). To the extent the first requestor is a parent, guardian, or managing conservator of the child victim at issue, the requestor has a right of access to information related to that minor child that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) (“a person or person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to a 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 themselves). Furthermore, we note some of the information at issue pertains to individuals who will be de-identified and whose privacy interests are, thus, protected. Upon review, we find some of the information in Exhibit C satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold all dates of birth belonging to identifiable individuals other than the first requestor’s minor child and the information you have marked in Exhibit C 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.⁴ *See* Gov’t Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we have marked in Exhibit C under section 552.130 of the Government Code.

In summary, with respect to the second requestor, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code and, with the exception of the remaining basic information, which must be released to this requestor, may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code. With respect to the first requestor, if this requestor is not a parent, guardian, or managing conservator of a child victim listed in the information at issue, then the city must withhold the submitted information from the first requestor in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the first requestor is a parent, guardian, or managing conservator of a child victim listed in the information at issue, then the city: (1) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code; (2) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code; (3) with the exception of the remaining basic information, which must be released to this requestor, may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code; (4) must withhold all dates of birth belonging to

⁴ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481, 480 (1987), 470 (1987).

identifiable individuals other than the first requestor's minor child and the information you have marked in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy; (5) must withhold the motor vehicle record information we have marked in Exhibit C under section 552.130 of the Government Code; and (6) must release the remaining information in Exhibit C to this 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 973959

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)