



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 28, 2022

Ms. Cara Leahy White
Counsel for the City of Saginaw
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2022-36683

Dear Ms. White:

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# 986770 (ORR# W003785-083122).

The City of Weatherford (the "city"), which you represent, received a request for information pertaining to named individuals. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1315 of the Government Code. We have considered the exceptions 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. Section 552.101 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). You argue the submitted information is subject to chapter 261. Upon review, we find report numbers CFS 220039150, CFS 220039562, and CFS 220002296 were used or developed in investigations 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). Thus, the information is within the scope of section 261.201 of the Family Code. The city does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Thus, report numbers CFS 220039150, CFS 220039562, and CFS 220002296 are generally confidential under section 261.201(a) of the Family Code. Furthermore, you have not established the remaining information is a report or used or developed in an investigation of alleged or suspected abuse or neglect made under section 261.201. Therefore, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, section 261.201(a) of the Family Code provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *See id.* Chapter 411 of the Government Code constitutes “applicable state law” in this instance.

We note the requestor is a representative of the Texas Department of Family and Protective Services (“DFPS”). Section 411.114(a) of the Government Code states in pertinent part:

(2) [DFPS] . . . shall obtain from the [Department of Public Safety (“DPS”)] criminal history record information [“CHRI”] maintained by the [DPS] that relates to a person who is:

. . .

(I) an alleged perpetrator in a report the [DFPS] . . . receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

...

(4) Subject to Section 411.087, [DFPS] . . . [is] entitled to:

. . .

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov't Code § 411.114(a)(2)(I), (4)(B). For purposes of section 411.114, CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). A statutory right of access prevails over a claim under common-law privacy. *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 CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). The requestor does not state whether the individual at issue is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child. Thus, we must rule conditionally. If the individual at issue is an alleged perpetrator in reports received by DFPS of abuse or neglect of a child, then the city must release the CHRI from report numbers CFS 220039150, CFS 220039562, and CFS 220002296 regarding that individual pursuant to section 411.114 of the Government Code but must withhold the remaining information in these reports under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the individual at issue is not an alleged perpetrator in reports received by DFPS of abuse or neglect of a child, then the city must withhold the report numbers CFS 220039150, CFS 220039562, and CFS 220002296 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

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. The 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.). This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455* (1987). Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the individual at issue is an alleged perpetrator in reports received by DFPS of abuse or neglect of a child, then the city must release the CHRI from report numbers CFS 220039150, CFS 220039562, and CFS 220002296 regarding that individual pursuant to section 411.114 of the Government Code but must withhold the remaining information

in these reports under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the individual at issue is not an alleged perpetrator in reports received by DFPS of abuse or neglect of a child, then the city must withhold the report numbers CFS 220039150, CFS 220039562, and CFS 220002296 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold 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,

Anthony Crabtree
Attorney
Open Records Division

A1C/eb

Ref: ID# 986770

Enc. Submitted documents

c: Requestor
(w/o enclosures)