



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 5, 2022

Ms. Delietrice Henry
Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2022-37480

Dear Ms. Henry:

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# 986548 (ORR# P024363).

The Plano Police Department (the "department") received a request for information pertaining to a named individual. The department states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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). The department asserts some of the submitted information was used or developed in investigations under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Upon review, we find incident report number 2022-00148171 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. Accordingly, incident report number 2022-00148171 is generally confidential pursuant to section 261.201. However, we conclude the remaining information is not confidential under section 261.201(a) of the Family Code and the department may not withhold it under section 552.101 of the Government Code on that ground.

Section 261.201(a) provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. We note the requestor is a representative of the Dallas Police Department. Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] any criminal history record information [(“CHRI”)] maintained by [DPS] about a person.” *See Gov’t Code* § 411.089(a). In addition, section 411.087(a)(2) of the Government Code provides the following:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as “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). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, to the extent the requestor represents a “criminal justice agency,” the requestor is authorized to obtain CHRI concerning the named individual from the city pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See Gov’t Code* §§ 411.083(c), .087(a)(2).

Although the requestor is a representative of a criminal justice agency, we are unable to determine whether the requestor intends to use the information at issue for a criminal justice

purpose or for purposes consistent with the Family Code. *See* Gov't Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a). Accordingly, we must rule conditionally. If the department determines the requestor intends to use the CHRI for a criminal justice purpose and for purposes consistent with the Family Code, then the department must release the CHRI pursuant to section 411.087(a)(2) of the Government Code, but withhold the remaining information in incident report number 2022-00148171 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the department determines the requestor does not intend to use the CHRI for a criminal justice purpose and for purposes consistent with the Family Code, then the department must withhold incident report number 2022-00148171 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing 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 the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office has concluded the identifying information of juvenile victims of abuse or neglect is generally highly intimate or embarrassing. *Cf.* Fam. Code § 261.201; *see also* Open Records Decision No. 628 at 3 (1994) (identities of juvenile victims of serious sexual offenses must be withheld on basis of common-law privacy). 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.). The department must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. We also find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the department must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.¹ Gov't Code § 552.1175. For purposes of section 552.1175, "family member" means a spouse, minor child, or adult child who resides in the person's home. *Cf.* Gov't Code § 552.117(c) ("family member" has meaning assigned by Fin. Code § 31.006(d)). Section 552.1175, applies, in part, to "current or honorably retired peace

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

officers as defined by Article 2.12, Code of Criminal Procedure[.]” Gov’t Code § 552.1175(a)(1)); *see id.* § 552.003(1-b) (defining “honorably retired” for purposes of the Act). Accordingly, the department must withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue is a current or honorably retired peace officer and elects to restrict access to the marked information at issue in accordance with section 552.1175(b) of the Government Code. Conversely, if the individual at issue is not a current or honorably retired peace officer or does not elect to restrict access to the information at issue in accordance with section 552.1175(b), then the department may not withhold this information under section 552.1175 of the Government Code.

In summary, if the department determines the requestor intends to use the CHRI at issue for a criminal justice purpose and for purposes consistent with the Family Code, then the department must release the CHRI pursuant to section 411.087(a)(2) of the Government Code, but withhold the remaining information in incident report number 2022-00148171 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines the requestor does not intend to use the CHRI for a criminal justice purpose and for purposes consistent with the Family Code, then the department must withhold incident report number 2022-00148171 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the submitted dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue is a current or honorably retired peace officer and elects to restrict access to the marked information at issue in accordance with section 552.1175(b) of the Government Code. The department must release the remaining information.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 986548

Enc. Submitted documents

c: Requestor
(w/o enclosures)