



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2022

Ms. Rene Moreland
Open Records Technician
Allen Police Department
205 West McDermott Drive
Allen, Texas 75013

OR2022-38700

Dear Ms. Moreland:

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# 989925 (Ref. No. PD-2022-909).

The Allen Police Department (the "department") received a request for information pertaining to a specified address during a stated time period.¹ You state the department will redact dates of birth pursuant to the previous determination issued in Open Records Letter

¹ The department indicates it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

No. 2018-11817 (2018).² You also state the department will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code; social security numbers pursuant to section 552.147(b) of the Government Code; and certain information pursuant to Open Records Decision No. 684 (2009).³ You claim the submitted information is excepted from disclosure under sections 552.101 and 52.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, the department failed to comply with section 552.301 of the Government Code. 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* Gov't Code § 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). You claim sections 552.101 and 552.108 of the Government Code for the submitted information. Although you claim section 552.101 of the Government Code in conjunction with the common-law informer's privilege and section 552.108 of the Government Code for the submitted information, we find you have failed to establish a compelling reason to address these arguments. However, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this exception to the submitted information.

² Open Records Letter No. 2018-11817 is a previous determination authorizing the department to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

³ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he 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.

Fam. Code § 261.201(a). The submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the department. *See 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 the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information and, therefore, we assume no such regulation exists. Given that assumption, we conclude the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁴ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). We note the department must not release basic information when a report is confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

⁴ As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jxd

Ref: ID# 989925

Enc. Submitted documents

c: Requestor
(w/o enclosures)