



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2022

Mr. Nico Arias
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-38990

Dear Mr. Arias:

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# 990265 (PIR No. E004949-092222).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident involving the requestor's minor children. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 information protected by 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.

Fam. Code § 261.201(a). Upon review, we find the submitted information may relate to a report of alleged or suspected abuse or neglect. However, we are unable to determine the ages of the victims involved in the information at issue. *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 must rule in the alternative. To the extent any of the victims of alleged or suspected abuse or neglect was a child at the time of the incident at issue, then the information is subject to chapter 261 of the Family Code. In that instance, as the city does not indicate it has adopted a rule that governs the release of this type of information, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, to the extent none of the victims of alleged or suspected abuse or neglect was a child at the time of the incident at issue, then the information is not subject to chapter 261 of the Family Code and the city may not withhold the information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides as follows:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

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

- (1) a juvenile justice agency, as defined by Section 58.101;
- (2) a criminal justice agency, as defined by Section 411.082, Government Code;
- (3) the child; or
- (4) the child's parent or guardian.

(e) Before a child or a child's parent or guardian may inspect or a copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

...

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

Fam. Code § 58.008(b), (d), (e)(2); *see also id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we find the submitted information involves juvenile offenders, so as to fall within the scope of section 58.008(b). In this instance, however, the requestor is a parent or legal guardian of the juvenile offenders at issue and, thus, has a right of access to the information at issue pursuant to section 58.008(d). *See* Fam. Code § 58.008(d). Therefore, the city may not withhold the information at issue on that ground. *See id.* However, section 58.008(e)(2) states any information excepted from required disclosure must be redacted. *See id.* § 58.008(e)(2). Thus, we will consider whether the information at issue is otherwise excepted from disclosure.

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 requestor has a right of access to the dates of birth pertaining to her minor children. *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). Therefore, with the exception of the dates of birth pertaining to the requestor's minor

children, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent any of the victims of alleged or suspected abuse or neglect was a child at the time of the incident at issue, then the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent none of the victims of alleged or suspected abuse or neglect was a child at the time of the incident at issue, then (1) with the exception of the dates of birth pertaining to the requestor's minor children, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy and (2) the city 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/mo

Ref: ID# 990265

Enc. Submitted documents

c: Requestor
(w/o enclosures)