



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 5, 2016

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Road
Cedar Park, Texas 78613

OR2016-17694

Dear Ms. Quinn:

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# 621561 (Ref. No. 16-831).

The Cedar Park Police Department (the "department") received a request for information pertaining to a specified incident. You state the department will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code.¹ You state the department will make some information available to the requestor. You claim some of 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.

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 other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

¹Section 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 from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b).

(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.

...

(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 the record or file must redact:

...

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

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the information in Exhibit E and report 1603-0131 were used or developed in investigations of alleged or suspected child abuse or neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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). Thus, Exhibit E and report 1603-0131 are subject to section 261.201 of the Family Code. In this case, the requestor is a parent of the child victim named in the submitted information. However, the requestor is alleged to have committed the suspected abuse or neglect at issue in Exhibit E.

Thus, the requestor does not have a right of access to Exhibit E under section 261.201(k). *See id.* § 261.201(k). Accordingly, we conclude Exhibit E is confidential pursuant to section 261.201 of the Family Code and the department must withhold it under section 552.101 of the Government Code on that basis.² However, the requestor is not alleged to have committed the suspected abuse or neglect in report 1603-0131. Thus, pursuant to section 261.201(k), the department may not withhold report 1603-0131 from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* However, section 261.201(1)(2) states a governmental body must redact any information that is excepted from required disclosure under the Act or other law. *See id.* § 261.201(1)(2). Accordingly, we will consider whether report 1603-0131 is otherwise excepted from disclosure under the Act.

Section 552.108(a)(2) of the Government Code excepts from disclosure information dealing with the detection, investigation, or prosecution of crime only in relation to an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states the information in Exhibit C relates to concluded cases that did not result in convictions or deferred adjudications. Based on the department's representation, we conclude section 552.108(a)(2) is applicable to the information at issue. Thus, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code.

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 common-law right of 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. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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 supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.³ *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to

²As our ruling is dispositive, we need not address the department's remaining argument against disclosure of this information.

³Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Thus, the department must withhold the public citizens' dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold Exhibit E in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department may withhold Exhibit C under section 552.108(a)(2) of the Government Code. The department must withhold the public citizens' dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.⁴

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bw

Ref: ID# 621561

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note that because the requestor has a statutory right of access to certain information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.