



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 12, 2016

Ms. Lisa D. Mares
Counsel for the City of Joshua
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2016-18283

Dear Ms. Mares:

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# 622518.

The City of Joshua and the Joshua Police Department (collectively the "city") received two requests from different requestors for a specified incident report and a third request from a different requestor for all information involving a named individual during a specified time period. You state you will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ 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.

Initially, we note the first two requestors seek only information related to a specified incident. Thus, any additional information that does not relate to this incident is not responsive to the first two requests. This ruling does not address the public availability of any information that is not responsive to these requests and the city is not required to release any non-responsive information to the first two requestors in response to their requests.

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 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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. A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

The third request seeks unspecified reports pertaining to a named individual. This request requires the city to compile the named individual’s criminal history and implicates the privacy of the named individual. Therefore, to the extent the city maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information from the third requestor under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, the first two requestors only seek information pertaining to a specified incident. As these requests do not require the city to compile unspecified criminal history records of an individual, we find an individual’s privacy interest is not implicated in these requests. Accordingly, the city may not withhold information responsive to the first two requests under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Section 261.201 of the Family Code 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.

(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). The information responsive to the first two requests consists of a report of alleged or suspected child abuse or neglect made to the city. *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. However, we note the second requestor is a parent of the child victim listed in the information, and is not alleged to have committed the abuse or neglect. Further, we note the first requestor may be a managing conservator or other legal representative of the child victim listed in the information, and is not alleged to have committed the abuse or neglect. If the first requestor is not a managing conservator or other legal representative of the child victim, then the city must withhold the responsive information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, pursuant to section 261.201(k), the city may not withhold the information at issue from a parent, managing conservator, or other legal representative of the child victim under section 552.101 of the Government Code on that basis. *See id.* § 261.201(k). Nevertheless, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider the applicability of other exceptions to 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 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.² *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 section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. We note an individual has a right of access to their own date of birth under section 552.023 of the Government Code and it may not be withheld from them on the basis of common-law privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the city may not withhold the second requestor's date of birth from her under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city must withhold the remaining public citizen's date of birth from the first and second requestors under section 552.101 of the Government Code in conjunction with common-law privacy. Furthermore, to the extent the first requestor has a right of access to the responsive information, the city must withhold the second requestor's date of birth from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the city maintains unspecified law enforcement records listing the individual named in the third request as a suspect, arrestee, or criminal defendant, the city must withhold such information from the third requestor under section 552.101 of the Government Code in conjunction with common-law privacy. If the first requestor is not a managing conservator or other legal representative of the child victim, then the city must withhold the responsive information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the first requestor is a managing conservator or other legal representative of the child victim, then the city must: (1) withhold the second requestor's date of birth and the remaining public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) release the remaining responsive information to the first requestor. With regard to the second requestor, the city must: (1) withhold the date of birth of the public citizen who is not the second requestor under section 552.101 of the

²Section 552.102(a) exempts 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).

Government Code in conjunction with common-law privacy; and (2) release the remaining responsive information to the second requestor.³

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 622518

Enc. Submitted documents

c: Requestors
(w/o enclosures)

³We note the information being released contains a social security number. 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* Gov't Code § 552.147(b). We also note the second requestor, and possibly the first requestor, has a special right of access to some of the information being released in this instance. *See* Fam. Code § 261.201(k); Gov't Code § 552.023(b); ORD 481 at 4.