



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 3, 2016

Ms. Yvette Aguilar
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2016-22185

Dear Ms. Aguilar:

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# 628796 (CCPD File No. SGal1).

The Corpus Christi Police Department (the "department") received a request for a specified police report. 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. This section encompasses information protected by section 261.201 of the Family Code, which provides in relevant part:

(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 submitted information was used or developed in an investigation by the department of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also 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). Therefore, this information falls within the scope of section 261.201(a).

We note the requestor is a step-parent of the child victim and may be a parent or managing conservator of the child victim listed in the information. Further, the requestor is not alleged to have committed the abuse. As such, this requestor may have a right of access to the submitted information pursuant to section 261.201(k). As we are unable to determine whether the requestor is a parent or managing conservator of the child victim, we will rule conditionally. If the requestor is not a parent or managing conservator of the child victim listed in the submitted information, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Conversely, if the requestor is a parent or managing conservator of the child victim, then the department may not withhold the

submitted information under section 552.101 of the Government Code on the basis of section 261.201(a). *Id.* § 261.201(k). Section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, to the extent the requestor is a parent or managing conservator of the child victim, we will consider whether any portion of the submitted information is 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 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.¹ *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 the information at issue includes the dates of birth of the requestor and her spouse. Section 552.023(a) of the Government Code states that a person or a person's authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the requestor has a right of access to her date of birth as well as her spouse's date of birth if she is acting as her spouse's authorized representative. Therefore, the department may not withhold the requestor's own date of birth from her under common-law privacy. Furthermore, if the requestor is acting as her spouse's authorized representative, then the department may not withhold her spouse's date of birth under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as her spouse's authorized representative, then the department must withhold his date of birth, which we marked, under section 552.101 in conjunction with common-law privacy. We further note, if the requestor is the parent or managing conservator of the children listed in the submitted information, she also has a special right of access to information related to these individuals that would otherwise be protected under common-law privacy. *See* Gov't Code § 552.023(b); ORD 481 at 4. In this instance, the department may not withhold the dates of birth related to these individuals from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, the department must

¹Section 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).

withhold the remaining date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the requestor is not a parent or managing conservator of the child victim listed in the submitted information, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a parent or managing conservator of the child victim listed in the submitted information, then (1) if the requestor is not acting as her spouse's authorized representative, the department must withhold his date of birth under section 552.101 in conjunction with common-law privacy; (2) the department must withhold the remaining date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the department must release the remaining information.

You ask this office to issue a previous determination permitting the department to withhold from disclosure information that was used or developed in an investigation conducted under chapter 261 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code without seeking a ruling from this office. *See Gov't Code § 552.301(a)* (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/som

Ref: ID# 628796

Enc. Submitted documents

c: Requestor
(w/o enclosures)