



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2016

Ms. Beverly West
Legal Department
Galveston County
722 Moody Street, Fifth Floor
Galveston, Texas 77550

OR2016-22866

Dear Ms. West:

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# 629899.

The Galveston County Sheriff's Office (the "sheriff's office") received a request for 1) all testimony and written statements provided by the requestor's daughter, the requestor, or six named individuals; all related police reports; and all evidence from a named private investigator or any attorney pertaining to a specified case and 2) all Child Protective Services reports pertaining to the requestor, her daughter, and ten named individuals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 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. This section encompasses information confidential under 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.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . 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 submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to section 261.201 of the Family Code. We note the requestor is the parent of the child victims. However, we note the requestor is alleged to have committed the suspected abuse or neglect in some of the submitted investigations. Thus, the requestor does not have a right of access to the information we marked under section 261.201(k). *See id.*

§ 261.201(k). Therefore, we conclude the information at issue is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we note the requestor is not alleged to have committed the abuse or neglect at issue in the remaining information. Thus, pursuant to section 261.201(k), the remaining information may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). Section 261.201(l)(2), however, 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). Therefore, we will consider the applicability of other exceptions to disclosure for the remaining information.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. Gov't Code § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information you marked and the information we marked and indicated under section 552.130 of the Government Code.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147. Upon review, we agree the sheriff's office may withhold the social security numbers in the remaining information under section 552.147 of the Government Code.

Section 552.101 of the Government Code also 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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. *Indus. Found.*, 540 S.W.2d 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 *Tex. 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. However, we note the requestor has a right of access to her own birth date and her minor children's birth dates. 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). Thus, the sheriff's office must withhold the information we indicated and all public citizens' dates of birth in the remaining information, other than the dates of birth of the requestor and her minor children, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy, which protects two kinds of interests. See *Whalen v. Roe*, 429 U.S.589, 599-600 (1977); see also Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); see also ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir.1985); see also ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

This office has applied privacy to protect certain information about incarcerated individuals. See Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). This office held those individuals who correspond with inmates possess a "first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure," and that right would be violated by the release of information that identifies those correspondents because such a release would discourage correspondence. ORD 185 at 2; see *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976). The information at issue in Open Records Decision No. 185 was the identities of individuals who had corresponded with inmates. In that decision, our office found that "the public's right to obtain an inmate's correspondence list is not sufficient to overcome the first amendment right of the inmate's correspondents to maintain communication with him free of the threat of public exposure." ORD 185 at 2. Implicit in

¹Section 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).

this holding is the fact that an individual's association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined inmate visitor and mail logs that identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. ORD 430, 428. Further, we recognized inmates had a constitutional right to visit with outsiders and could also be threatened if their names were released. *See* ORDs 428, 430. The rights of those individuals to anonymity were found to outweigh the public's interest in this information. ORD 185; *see* ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). We note although the information at issue includes video recordings of the requestor's visits to the inmate, the requestor does not have a right of access to this information under section 552.023 of the Government Code because the constitutional rights of the inmate are also implicated. *See* Gov't Code § 552.023; *see also* ORD 430. Accordingly, the sheriff's office must withhold the information we indicated under section 552.101 of the Government Code in conjunction with constitutional privacy.

In summary, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The sheriff's office must withhold the motor vehicle record information you marked and the additional information we marked and indicated under section 552.130 of the Government Code. The sheriff's office may withhold the social security numbers in the remaining information under section 552.147 of the Government Code. The sheriff's office must withhold the information we indicated and all public citizens' dates of birth, other than the dates of birth of the requestor and her minor children, under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we indicated under section 552.101 of the Government Code in conjunction with constitutional privacy. The sheriff's office must release the remaining information.²

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/>

²We note the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again seek a ruling from this office.

[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,

A handwritten signature in cursive script that reads "Ashley Crutchfield". The signature is written in black ink and is positioned above the typed name.

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 629899

Enc. Submitted documents

c: Requestor
(w/o enclosures)