



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 7, 2016

Ms. Karon Newby-Cooley  
Records Supervisor  
Pflugerville Police Department  
P.O. Box 679  
Pflugerville, Texas 78691

OR2016-22673

Dear Ms. Newby-Cooley:

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# 630130 (ORR# W004662-072116).

The Pflugerville Police Department (the "department") received a request for all police and court records on file pertaining to the requestor. You state the department has released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> 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 protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part, the following:

(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

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<sup>1</sup>Although you do not raise section 552.130 of the Government Code in your brief, we understand you to raise this exception based on your markings. We further note the department did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(e). Nonetheless, because sections 552.101 and 552.130 of the Government Code are mandatory exceptions that can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider the department's claims. *See id.* §§ 552.007, .302.

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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

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

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l). Upon review, we find Report 10120063 pertains to an investigation by the department of alleged or suspected child abuse or neglect and falls within the scope of section 261.201 of the Family Code. *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). Thus, we find Report 10120063 is generally confidential under section 261.201 of the Family Code. We note the requestor is a child victim listed in the information, and is now an adult. Therefore, the department may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* § 261.201(k). However, pursuant to section 261.201(l)(1), the department must withhold the identifying information of a victim or witness who is under eighteen years old and is not the requestor, which we have marked, under section 552.101 of the Government Code. *Id.* § 261.201(l)(1). Further, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Accordingly, the department must withhold the reporting party’s identity we have marked under section 552.101 in conjunction with section 261.201(l)(3). *Id.* In addition, section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure; thus, we will address your remaining arguments for this information. *Id.* § 261.201(l)(2). However, upon review, we find you have failed to demonstrate any of the remaining information involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 of the Family Code, or that this information was used or developed in an investigation under chapter 261. Accordingly, we conclude the department may not withhold any of the remaining information under section 552.101 on this basis. Thus, we will determine whether the remaining information is otherwise excepted from release under the Act.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See id.* § 58.007(c). Section 58.007 provides, in relevant part, the following:

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

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

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from 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 Subchapters B, D, and E.

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

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

- (1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
- (2) any information that is excepted from required disclosure under [the Act], or other law.

*Id.* § 58.007(c), (e), (j). Upon review, we find the Reports 10120063 and 11040278 and Call Sheet 12-47447 involve alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (for purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age when the conduct occurred), .03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Therefore, the information at issue is generally confidential under section 58.007(c) of the Family Code. However, the requestor is one of the juvenile offenders in these incidents. Under section 58.007(e), the requestor has a right to inspect juvenile law enforcement records concerning himself. *Id.* § 58.007(e). However, section 58.007(j)(1) provides that any identifiable information about a juvenile offender who is not the requestor must be redacted. *Id.* § 58.007(j)(1). Thus, the department must withhold the identifying information of the other juvenile offenders we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Additionally, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted before a governmental body releases information pursuant to section 58.007(e). *Id.* § 58.007(j)(2). Thus, we will determine whether the remaining information is otherwise excepted from release under the Act.

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. 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.<sup>2</sup> *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 requestor has a right of access to his own date of birth pursuant to section 552.023 of the Government Code and it may not be withheld from him on the basis of common-law privacy. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In addition, some of the remaining dates of birth belong to individuals who have been de-identified and whose privacy interest are, thus, protected. Accordingly, with the exception of the requestor's date of birth and the dates of birth of the individuals who have been de-identified, the department must withhold all identifiable public citizens' dates of birth under section 552.101 on the basis of common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130. Upon review, we find a portion of the information you have marked does not constitute motor vehicle record information. Additionally, we note section 552.130 protects personal privacy. Thus, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. See *id.* § 552.023(a); ORD 481 at 4. Accordingly, except for the information we have marked for release, the department must withhold the motor vehicle record information you have marked, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the identifying information of a victim or witness who is under eighteen years old and is not the requestor, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. The department must withhold the reporting party's identity we have marked under section 552.101 in conjunction with section 261.201(l)(3). The department must withhold the identifying information of the other juvenile offenders we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. With the exception of the requestor's date of birth and the dates of birth of the individuals who have been de-identified, the department must withhold all identifiable public citizens' dates of birth under section 552.101 on the basis of common-law privacy. Except

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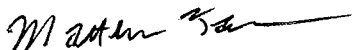
<sup>2</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

for the information we have marked for release, the department must withhold the motor vehicle record information you have marked, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code. The department must release the remaining information.<sup>3</sup>

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](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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/bhf

Ref: ID# 630130

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the requestor has a right of access to some of the information being released. See Fam. Code §§ 58.007(e), 261.201(k); Gov't Code § 552.023(a); ORD 481 at 4. Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.