



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2017

Ms. Linda Hight
Records Coordinator
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033

OR2017-00687

Dear Ms. Hight:

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# 640790.

The Cleburne Police Department (the "department") received a request for information related to any arrest of the requestor's client during a specified time period. You indicate the department will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ You state the department has released some of the requested information.² You claim some of 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.

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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).

²You acknowledge the requestor has a right of access to the information being released. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). If the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

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 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads as follows:

(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 Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). 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 at the time of the reported

conduct. *See id.* § 51.02(2). Report numbers 992117, 992108, 992116, 993472, 205393, and 215407 involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). We note the requestor’s client is listed as an adult offender in report number 215407. Thus, the requestor does not have a right of access to this report under section 58.007(e) of the Family Code. *Id.* § 58.007(e). It does not appear any of the exceptions in section 58.007 apply to report number 215407. Therefore, the department must withhold report number 215407 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Report numbers 992117, 992108, 992116, 993472, and 205393 are generally confidential under section 58.007(c). In this instance, the requestor is an attorney for one of the juvenile offenders at issue in these reports. Therefore, this requestor has a right to inspect information concerning his client under section 58.007(e), and it may not be withheld from him under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *Id.* However, section 58.007(j)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor’s client must be redacted. *See id.* § 58.007(j)(1). We note dates of birth are not considered personally identifiable information for purposes of section 58.007(j)(1). Accordingly, with the exception of the dates of birth you marked, the department must withhold the information you marked within report numbers 992117, 992108, 992116, 993472, and 205393 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Further, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will address your remaining argument against disclosure of report numbers 992117, 992108, 992116, 993472, and 205393.

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,

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).

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. You seek to withhold dates of birth not belonging to the requestor's client within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. We note the juveniles' dates of birth you seek to withhold on this basis relate to individuals whose identities are withheld under section 552.101 of the Government Code in conjunction with section 58.007(j)(1). Thus, this information relates to individuals who have been de-identified and whose privacy interests are thus protected, and the dates of birth of individuals who have been de-identified may not be withheld under section 552.101 on that basis. Thus, with the exception of the dates of birth of individuals who have been de-identified, the department must withhold all public citizens' dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold report number 215407 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of the dates of birth you marked, the department must withhold the information you marked within report numbers 992117, 992108, 992116, 993472, and 205393 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 dates of birth of individuals who have been de-identified, the department must withhold all public citizens' dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information to this requestor.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 640790

Enc. Submitted documents

c: Requestor
(w/o enclosures)