



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 4, 2017

Mr. L. Brian Narvaez  
Counsel for the City of Joshua  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2017-06956

Dear Mr. Narvaez:

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# 651640.

The City of Joshua (the "city"), which you represent, received two requests from different requestors for information pertaining to a specified incident. 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. Section 552.101 encompasses section 58.007 of the Family Code, which provides, in pertinent part, 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[.]

Fam. Code § 58.007(c), (e), (j)(1). Section 58.007(c) is applicable to law enforcement records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). 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). Upon review, we find the submitted information involves alleged delinquent conduct or conduct indicating a need for supervision that occurred on or 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). However, we are unable to determine the ages of the alleged offenders. Therefore, we must rule conditionally. Accordingly, to the extent any of the alleged offenders were ten years of age or older and under seventeen years of age at the time of the conduct, the submitted information is confidential pursuant to section 58.007(c) of the Family Code and must generally be withheld in its entirety under section 552.101 of the Government Code. In this instance, the first requestor is the parent of one of the alleged offenders. As noted above, section 58.007(e) states law enforcement records and files concerning a child may be inspected or copied by the child's parent. *See* Fam. Code § 58.007(e). Accordingly, if the first requestor's child was ten years of age or older and under seventeen years of age at the time of the conduct, then, pursuant to section 58.007(e), the city may not withhold the submitted information from the first requestor under

section 58.007(c). *See 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 child must be redacted. *See id.* § 58.007(j)(1). We note, for the purposes of section 58.007(j)(1), a juvenile suspect or offender is a child as defined by section 51.02 of the Family Code, but a juvenile victim or witness is a person who is under eighteen years of age. Accordingly, in that instance, the city must withhold the identifiable information about any juvenile suspect, offender, victim, or witness who is not the first requestor's child under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Furthermore, section 58.007(j)(2) states before a child or a child's parent may inspect or copy a record or file concerning the child under section 58.007(e), the custodian of the record shall redact information that is excepted from required public disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2). Thus, we will consider the applicability of other exceptions to the submitted information. However, if none of the alleged offenders were ten years of age or older and under seventeen years of age at the time of the conduct, the submitted information is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 on that basis.

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>1</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. However, we note the submitted information includes the first requestor's date of birth. The first requestor has a right of access to this information pursuant to section 552.023 of the Government Code. *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 individual requests

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<sup>1</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).

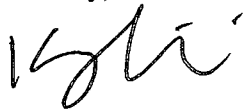
information concerning himself). Nevertheless, the city must withhold this date of birth, which we have marked, from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy, to the extent it is not confidential under section 58.007(c) of the Family Code.

In summary, if any of the alleged offenders were ten years of age or older and under seventeen years of age at the time of the conduct and the first requestor's child was not ten years of age or older and under seventeen years of age at the time of the conduct, the city must withhold the submitted information in its entirety from both requestors under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the first requestor's child was ten years of age or older and under seventeen years of age at the time of the conduct, then the city must (1) withhold the identifiable information about any juvenile suspect, offender, victim, or witness who is not the first requestor's child under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code, and release the remaining information to the first requestor pursuant to section 58.007(e) of the Family Code; and (2) withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If none of the alleged offenders were ten years of age or older and under seventeen years of age at the time of the conduct, then the city must release the submitted information, with the exception of the date of birth we have marked that the city must withhold from the second requestor under section 552.101 in conjunction with common-law privacy.

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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 651640

Enc. Submitted documents

c: Requestor  
(w/o enclosures)