



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 16, 2017

Ms. Jessika J. Velasquez  
Counsel for the City of Watauga  
Law Offices of Evans, Daniel, Moore, Evans & Biggs  
115 West Second Street, Suite 202  
Fort Worth, Texas 76102

OR2017-10577

Dear Ms. Velasquez:

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# 658259 (Internal Ref. No. 17-123).

The Watauga Police Department (the "department"), which you represent, received a request for all information pertaining to the requestor during a certain time period. You inform us the department has released some of the submitted information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 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. Section 552.101 encompasses information made confidential by other statutes, such as section 58.007(c) of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c). The relevant language of section 58.007(c) reads as follows:

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<sup>1</sup>Although you do not raise section 552.130 in your brief, we understand you to assert this exception based on your markings.

(c) Except as provided by [s]ubsection (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.

Fam. Code § 58.007(c). 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). We note Exhibit B pertains to juvenile suspects who were ten years of age or older and under seventeen years of age at the time of the incident that is the subject of the report at issue. Further, this information involves 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). It does not appear that any of the exceptions in section 58.007 apply; therefore, Exhibit B is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the department must withhold Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (the “NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS

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<sup>2</sup>As our ruling is dispositive, we need not address your argument against disclosure of this information.

may disseminate this information as provided in chapter 411, subchapter E-1 or F of the Government Code. *See id.* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. However, section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See* Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in criminal justice system). Further, we note the term CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find you have not demonstrated the information at issue constitutes confidential CHRI; thus, the department may not withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

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. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). However, we note the information at issue contains the requestor's date of birth. The requestor has a right of access to his own date of birth and the department may not withhold it 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 individual requests information concerning herself). Nevertheless, the department must withhold all public citizens' dates of birth not pertaining to the requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

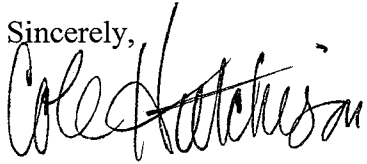
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. However, we note section 552.130 protects personal privacy. Thus, the requestor has a right of access to some of the motor vehicle record information you have marked pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b); ORD 481 at 4. Therefore, the department may not withhold this information, which we have marked for release, from the requestor under section 552.130 of the Government Code. Nevertheless, with the exception of the information we have marked for release, the department must withhold the motor vehicle record information you have marked and we have marked for withholding under section 552.130 of the Government Code.

In summary, the department must withhold Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold all public citizens' dates of birth not pertaining to the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the department must withhold the motor vehicle record information you have marked and we have marked for withholding 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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

Ref: ID# 658259

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 Gov't Code § 552.023(a); ORD 481 at 4.