



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 7, 2017

Ms. Ileana Fernandez  
Assistant City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2017-12530

Dear Ms. Fernandez:

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# 661062.

The Mesquite Police Department (the "department") received a request for two specified incident reports. You state the department will redact dates of birth pursuant to Open Records Letter No. 2015-24970 (2015).<sup>1</sup> 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. Section 552.101 encompasses section 58.007 of the Family Code, which provides, in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

---

<sup>1</sup>Open Records Letter No. 2015-24970 is a previous determination issued to the department authorizing it to withhold private citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

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). Section 58.007(c) is applicable to 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). We find Exhibit 2 involves a juvenile offender engaged in delinquent conduct that occurred after September, 1, 1997, so as to fall within the scope of section 58.007(c). It does not appear that any of the exceptions in section 58.007 apply; therefore, the department must withhold Exhibit 2 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 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual’s privacy. In this instance, you inform us the requestor knows both the identity of the individual involved and the nature of the incident in the remaining report. Therefore, withholding only the individual’s identity or certain details of the incident from the requestor

---

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

would not preserve the subject individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup>

In summary, the department must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the remaining information under section 552.101 of the Government Code 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,



Emily Buchanan  
Attorney  
Open Records Division

EB/eb

Ref: ID# 661062

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>3</sup>As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.