



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2017

Mr. T. Daniel Santee
Counsel for City of Schertz
Denton Navarro Rocha Bernal Hyde & Zech, P.C.
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2017-13927

Dear Mr. Santee:

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# 662707.

The City of Schertz (the "city"), which you represent, received a request for all service calls and related 911 calls to a specified address during a specified time period. You state you have released some information. 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. 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:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j)(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 at the time of the reported conduct. *See id.* § 51.02(2). Some of the submitted information involves a child engaged in 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). Thus, this information is generally confidential under section 58.007(c). In this instance, the requestor is a step-parent of the named juvenile offender and, therefore, may have access to some of the information at issue pursuant to section 58.007(e) as the child's legal guardian. *See id.* § 58.007(e). Therefore, we must rule conditionally. If the requestor is not a legal guardian of the juvenile offender at issue, then the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor is a legal guardian of the juvenile offender at issue, then the

city may not withhold the information we marked on that ground. *See id.* § 58.007(e). We note, however, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). In the event the requestor does have a right of access to the information at issue, we will consider the applicability of other exceptions to disclosure of this information. However, we find none of the remaining information consists of juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision. Therefore, we find you have failed to demonstrate the applicability of section 58.007 to the remaining information, and it may not be withheld under section 552.101 on this 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.). 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.

Upon review, we find the remaining information includes the date of birth of a public citizen and information we have marked that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, the requestor knows both the identity of the individual involved as well as the nature of the incident in incident number 2017-09001. Therefore, withholding only the individual's identity or certain details of this incident from the requestor would not preserve the subject individual's common-law right of privacy. However, as noted above, the requestor may be the legal guardian of the individual whose privacy interests are at issue in incident number 2017-09001 and may have a right of access to this information. Section 552.023(a) of the Government Code states that a person or a person's authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, if the requestor is the legal guardian of the individual at issue in incident number 2017-09001, then he has a right of access to the individual's private information pursuant to section 552.023(a),

and this information may not be withheld under section 552.101 in conjunction with common-law privacy. If the requestor is not the legal guardian of the individual at issue in incident number 2017-09001, then the city must withhold the report in its entirety under section 552.101 in conjunction with common-law privacy. We note the remaining information includes the date of birth of the requestor's spouse. Accordingly, the requestor has a right of access his spouse's date of birth if he is acting as his spouse's authorized representative. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the requestor is acting as his spouse's authorized representative, then the city may not withhold his spouse's date of birth under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as his spouse's authorized representative, then the city must withhold her date of birth, which we marked, under section 552.101 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.¹ *See* Gov't Code § 552.130(a). We note section 552.130 protects privacy interests. Thus, as noted above, the requestor may be his spouse's authorized representative, and may have a right of access to information pertaining solely to her that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is acting as his spouse's authorized representative, then the city may not withhold any motor vehicle record information pertaining solely to the requestor's spouse, which we marked, under section 552.130. If the requestor is not acting as his spouse's authorized representative, then the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not the legal guardian of the juvenile offender at issue, then the city must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code and (2) incident number 2017-09001 its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the legal guardian of the juvenile offender at issue, and the requestor is not acting as his spouse's authorized representative, then the city must: (1) withhold the date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy, (2) withhold the motor vehicle

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481, 480 (1987), 470 (1987).

record information we marked under section 552.130 of the Government Code, and (3) release the remaining information.²

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,



Kaelan A. Henze
Attorney
Open Records Division

KAH/eb

Ref: ID# 662707

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²In this instance, the requestor has a right of access to the information being released. Thus, if the city receives another request for this information from a different requestor, the city must seek another ruling from this office.