



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2017

Mr. Thomas A. Gwosdz
City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2017-14554

Dear Mr. Thomas:

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# 664489.

The City of Victoria (the "city") received a request for all police reports pertaining to a specified address during a defined time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). You state the city received the instant request for information on April 7, 2017. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. We understand April 14, 2017, was a city holiday; therefore, the ten-business-day deadline for the present request was April 24, 2017. However, the envelope in which the city provided the information required by section 552.301(b) was meter-marked April 25, 2017. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail,

common or contract carrier, or interagency mail). Thus, the city failed to comply with the procedural requirements mandated by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). You assert sections 552.101 and 552.108 of the Government Code for the submitted information. Additionally, some of the submitted information is subject to section 552.130 of the Government Code.¹ Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exception.

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 statute. 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:

(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 [s]ubchapters B, D, and E.

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 (1987), 480 (1987), 470 (1987).

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). You assert, and we agree, case number 2017-000557 pertains to a juvenile suspect who was ten years of age or older and under seventeen years of age at the time of the incident that is the subject of the submitted report. 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 any of the exceptions in section 58.007 apply; therefore, case number 2017-000557 is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the city must withhold case number 2017-000557 in its entirety under section 552.101 of the Government Code on that basis.

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 city may not withhold it from him on the basis of common-law privacy. *See Gov’t Code* § 552.023(a) (governmental body may not deny access to person or person’s representative to whom information relates on grounds that information is considered confidential under privacy principles); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning herself). Accordingly, the city 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. Therefore, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold (1) case number 2017-000557 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (2) 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; and (3) the motor vehicle

record information we have marked under section 552.130 of the Government Code. The city must 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 664489

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We 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. If the city receives another request for this information from a different requestor, then the city should again seek a decision from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).