



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 21, 2017

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2017-16372

Dear Mr. Dempsey:

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# 667569 (Ref. No. GCA17-0258).

The Garland Police Department (the "department") received a request for information pertaining to the requestor's client, including information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note you have submitted court orders of restricted access pertaining to some of the requested information. These orders were entered in accordance with section 58.203 of the Family Code, which states the Texas Department of Public Safety shall certify that juvenile law enforcement records are subject to automatic restriction of access under certain circumstances. Fam. Code § 58.203. Section 58.204(b) provides:

(b) On certification of records in a case under Section 58.203, the [Texas Department of Public Safety] may permit access to the information in the juvenile justice information system relating to the case of an individual only:

(1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;

(2) for research purposes, by the Texas Juvenile Justice Department;

(3) by the person who is the subject of the records on an order from the juvenile court granting the petition filed by or on behalf of the person who is the subject of the records;

(4) with the permission of the juvenile court at the request of the person who is the subject of the records;

(5) with the permission of the juvenile court, by a party to a civil suit if the person who is the subject of the records has put facts relating to the person's records at issue in the suit; or

(6) with the written permission of the individual, by military personnel, including a recruiter, of this state or the United States if the individual is an applicant for enlistment in the armed forces.

Id. § 58.204(b). Furthermore, section 58.207 of the Family Code provides, in relevant part:

(a) On certification of records in a case under Section 58.203, the juvenile court shall order:

(1) that the following records relating to the case may be accessed only as provided by Section 58.204(b):

...

(E) records maintained by a law enforcement agency[.]

...

(b) [O]n receipt of an order under Subsection (a)(1), the agency maintaining the records:

(1) may allow access only as provided by Section 58.204(b); and

(2) shall respond to a request for information about the records by stating that the records do not exist.

Id. § 58.207(a)(1)(E), (b). In this instance, the requestor is not one of the entities listed in section 58.204(b), to which access is allowed. Therefore, in accordance with the submitted

orders of restricted access and section 58.207(b) of the Family Code, we find the department must respond to the request by stating the records at issue do not exist.¹

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 protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 of the Family Code 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, 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:

...

¹As we are able to make this determination, we do not address your remaining argument against disclosure of this requested information.

(2) any information that is excepted from required disclosure under [the Act] or other law.

Fam. Code § 58.007(c), (e), (j)(2); *see id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find the remaining information contains documentation that involves a juvenile offender, so as to fall within the scope of section 58.007(c). However, we note the requestor represents the juvenile offender at issue, who is now an adult. Therefore, the information at issue, which pertains to the requestor’s client, may not be withheld under section 552.101 of the Government Code on that ground. *See id.* § 58.007(e). Further, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2). Thus, we will consider your remaining arguments for the information at issue.

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 court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). We note the requestor has a right of access to his client’s date of birth. *See Gov’t Code* § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the department must withhold the dates of birth you have marked 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* § 52.130. 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(a); 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 under section 552.130 of the Government Code.

In summary, in accordance with the submitted orders of restricted access and section 58.207(b) of the Family Code, we find the department must respond to the request by stating some of the records at issue do not exist. The department must withhold the dates of birth you have marked 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 under section 552.130 of the Government Code. The department 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 667569

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a right of access to some of the information being released, the department must again seek a decision from this office if it receives a request for this information from a different requestor. See Fam. Code § 58.007(e).