



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 8, 2017

Mr. William T. Little
Assistant Ellis County & District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2017-17837

Dear Mr. Little:

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# 669791.

The Ellis County Sheriff's Department (the "department") received a request for all records pertaining to the requestor during a specified time period. 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.

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:

...

(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 information you have indicated involves a juvenile offender engaged in delinquent conduct that occurred on or after September 1, 1997, so as to fall within the scope of section 58.007(c). However, we note the requestor is the juvenile offender at issue, and he is now an adult. Therefore, the information pertaining to the requestor 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 section 58.106 of the Family Code. You claim the submitted information is made confidential by section 58.106. However, subchapter B of chapter 58 of the Family Code, which contains section 58.106,

pertains to the administration of the juvenile justice information system by the Texas Department of Public Safety. *See id.* § 58.102. Because the submitted information was not requested from the Texas Department of Public Safety, we conclude that section 58.106 of the Family Code is not applicable in this instance. Thus, the submitted information is not confidential under section 58.106 and may not be withheld under section 552.101 of the Government Code on that basis.

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(a). We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to the requestor's own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. However, you have failed to demonstrate any of the remaining information you marked is subject to section 552.130. Thus, the department may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

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. The 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 requestor has a right of access to his own birth date. *See Gov't Code* § 552.023(a); ORD 481 at 4. Thus, the department must withhold all public citizens' dates of birth in the remaining information, other than the date of birth of the requestor, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to demonstrate the remaining information it marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the information we marked under section 552.130 of the Government Code. The department must withhold all public citizens' dates of birth in the remaining information, other than the date of birth of the requestor, under section 552.101 of the Government Code. The department must release the remaining information¹

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 669791

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See Gov't Code* § 552.147(b). We also note the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.