



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2017

Ms. Jessika J. Velasquez
Counsel for the City of Watauga
Law Offices of Evans, Daniel, Moore, Evans & Biggs
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2017-22101

Dear Ms. Velasquez:

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# 683534 (PIR # 17-488).

The City of Watauga (the "city") received a request for information pertaining to a specified incident. You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ 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 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise from which a record could be generated may not be disclosed to the public and shall be:

¹We understand you to assert section 552.130 as an exception to disclosure based on your markings.

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

(1) a juvenile justice agency, as defined by Section 58.101;

(2) a criminal justice agency, as defined by Section 411.082, Government Code;

(3) the child; or

(4) the child's parent or guardian.

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

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

Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 13 (to be codified at Fam. Code § 58.008(b), (d), (e)); *see* Fam. Code § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of Family Code); Act of May 19, 2017, 85th Leg., R.S., S.B. 1488, § 7.002 (to be codified as amendments to Fam. Code § 51.03(b)); Act of May 30, 2017, 85th Leg., R.S., H.B. 29, § 21 (to be codified as amendments to Fam. Code § 51.03(b)) (defining "conduct indicating a need for supervision"). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 22. The juvenile must have been at least 10 years old and less

than 17 years of age when the conduct occurred. *See* Fam Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code).

We find the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). In this instance, however, the requestor is the parent of the juvenile offender. As such, the requestor has a right to inspect juvenile law enforcement records concerning this juvenile pursuant to section 58.008(d) of the Family Code. *See* Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 13 (to be codified at Fam. Code § 58.008(d)). However, section 58.008(e)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor’s child must be redacted. *See* Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 13 (to be codified at Fam. Code § 58.008(e)(1)). Accordingly, upon review, we find the city must withhold the identifying information of the juvenile who is not the requestor’s child, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. However, the remaining information you have marked does not consist of the identifying information of a juvenile who is not the requestor’s child. Thus, the remaining information you have marked may not be withheld under section 552.101 on the basis of section 58.008(e)(1). Further, section 58.008(e)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See* Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 13 (to be codified at Fam. Code § 58.008(e)(2)). Thus, we will consider your arguments under section 552.101 in conjunction with common-law privacy and section 552.130 of the Government Code with respect to remaining information.

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.). However, we note the information at issue includes the requestor’s date of birth. The requestor has a right of access to this information. *See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access to records that contain information relating to the person that are 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 himself). The remaining information you have marked pertains to an individual who has been de-identified and whose privacy interests are, thus, protected. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license or driver’s license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov’t Code


§ 552.130(a)(1)-(2). We note, because section 552.130 protects privacy interests, the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the city may not withhold the information you have marked under section 552.130 of the Government Code.

In summary, the city must withhold the identifying information of the juvenile who is not the requestor's child, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family 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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/sb

Ref: ID# 683534

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the city must again seek a decision from this office if it receives a request for this information from a different requestor.