



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 30, 2017

Ms. Mary E. Miller  
Assistant District Attorney  
Denton County Sheriff's Office  
127 North Woodrow Lane, Suite 300  
Denton, Texas 76205

OR2017-24727

Dear Ms. Miller:

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# 682048.

The Denton County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. The sheriff's office claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions the sheriff's office claims 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 and from which a record could be generated may not be disclosed to the public and shall be:

(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.

Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 13 (to be codified at Fam. Code § 58.008(b)); *see also* Fam. Code § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). 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). Upon review, we find the submitted information does not involve a juvenile identified as a suspect, offender, or defendant. Therefore, we find that the sheriff’s office has failed to demonstrate the applicability of section 58.008 to the submitted information, and it may not be withheld under section 552.101 on this basis.<sup>1</sup>

Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code, which provides, in part, as follows:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate, or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001(2). Upon review, we find the sheriff’s office has failed to demonstrate any of the submitted information consists of mental health records for purposes of section 611.002. Accordingly, the submitted information is not confidential under section 611.002, and the sheriff’s office may not withhold it on that ground.

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

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<sup>1</sup>Although you raise former section 58.007(c) of the Family Code, we note former section 58.007(c) has been repealed and is no longer in effect. *See* Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 21.

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 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, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates to only a deceased individual. Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Upon review, the information we have marked satisfies the standard articulated in *Industrial Foundation*. Therefore, the sheriff's office must withhold all living public citizens' dates of birth, and the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, the date of birth we have marked for release pertains to a deceased individual and may not be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. See Gov't Code, § 552.130(a)(1). However, section 552.130 protects privacy, which is also a personal right that lapses at death. See *Moore*, 589 S.W.2d at 491; ORD 272 at 1. Thus, section 552.130 is not applicable to the deceased individual's driver's license, and the sheriff's office may not withhold it on that basis. Accordingly, with the exception of the information we have marked for release, the sheriff's office must withhold the motor vehicle record information it has marked, and the additional information we have marked, under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold all living public citizens' dates of birth, and the information we 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 sheriff's office must withhold the motor vehicle record information it has marked, and the additional information we have marked, under section 552.130 of the Government Code. The remaining information must be released.

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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/tdw

Ref: ID# 682048

Enc. Submitted documents

c: Requestor  
(w/o enclosures)