



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 28, 2017

Ms. Delietrice Henry  
Open Records Assistant  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2017-26922

Dear Ms. Henry:

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# 686001 (ORR# KATD091117).

The Plano Police Department (the "department") received a request for all records related to the requestor during a specified time period. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions the department 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 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;

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<sup>1</sup>Although the department does not raise section 552.130 of the Government Code in its brief, we understand the department to raise this exception based on its markings.

(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., ch. 746, § 13, 2017 Tex. Sess Law Serv. 3173, 3176-77 (Vernon) (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). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22, 2017 Tex. Sess. Law Serv. 3173, 3187. 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). The submitted information involves juvenile offenders, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply with respect to a portion of the information, which we have marked. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

In this instance, however, the requestor is one of the juvenile offenders listed in the remaining information. Thus, the requestor has a right to inspect juvenile law enforcement records concerning himself 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, the department must withhold the personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor, which the department marked, under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. 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 the remaining arguments against disclosure of the submitted information.

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 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, the information the department seeks to withhold on this basis relates to individuals who have been de-identified and whose privacy interests are thus protected. Accordingly, the department may not withhold the dates of birth it 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 § 552.130. Accordingly, the department must withhold the motor vehicle record information it marked and the additional motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the department must withhold (1) the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code, (2) the information it marked under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code, and (3) the motor vehicle record information it marked and the additional motor vehicle record information we marked under

section 552.130 of the Government Code. The department must release the remaining information to this requestor.<sup>2</sup>

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 686001

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the requestor has a right of access to the information at issue pursuant to section 58.008(d) of the Family Code. See Fam. Code § 58.008(d). If the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).