



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 18, 2017

Ms. Dawn Roberts
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2017-28636

Dear Ms. Roberts:

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# 688083 (PIR No. 45444).

The Arlington Police Department (the "department") received a request for all information pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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:

(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.

Fam. Code § 58.008(b), (d)-(e); *see also id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision" 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 id.* § 58.008. 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 understand the department to argue the

submitted information is subject to section 58.008(b) of the Family Code.¹ Upon review, we find the submitted information, which consists of report numbers 05-76195, 06-67505, and 06-60937, 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 to report number 05-76195. Therefore, report number 05-76195 is confidential under section 58.008(b) of the Family Code, and must generally be withheld in conjunction with section 552.101 of the Government Code.

However, we note the requestor is a representative with the Regional Public Defender for Capital Cases (the “public defender’s office”). Section 411.1272 of the Government Code provides:

[A] public defender’s office [is] entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information [(“CHRI”)] maintained by [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender’s office has been appointed.

Gov’t Code § 411.1272. In addition, section 411.087(a) of the Government Code provides, in pertinent part, the following:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). We note CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2).

Accordingly, the requestor is authorized to obtain the CHRI in report number 05-76195 from the department pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender is appointed. *See id.* §§ 411.087(a)(2), .1272. Therefore, if the department determines report number 05-76195 relates to a criminal case in which an attorney compensated by the public

¹Although you raise section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. Act of May 28, 2017, 85th Leg., R.S., ch. 746 (S.B. 1304), § 21.

defender is appointed, then the department must release the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that instance, the department must withhold the remaining information in report number 05-76195 under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code. If the department determines report number 05-76195 does not relate to a criminal case in which an attorney compensated by the public defender is appointed, then the department must withhold report number 05-76195 under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code.

As noted above, we find the remaining reports involve juvenile offenders, so as to fall within the scope of section 58.008(b). However, the requestor is the authorized representative of one of the juvenile offenders at issue in report numbers 06-67505 and 06-60937 who is now an adult. Thus, the requestor has a right to inspect juvenile law enforcement records concerning the juvenile at issue pursuant to section 58.008(d) of the Family Code. Therefore, report numbers 06-67505 and 06-60937 may not be withheld from her under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. *See* Fam. Code § 58.008(b). However, section 58.008(e)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness to whom the requestor is not the authorized representative of must be redacted. *See id.* § 58.008(e)(1). Accordingly, upon review, we find the department must withhold the identifying information of the other juveniles in report number 06-67505, 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, we are unable to determine of the age of the other suspect at issue in report number 06-60937. Thus, we must rule conditionally. If the other suspect in report number 06-60937 was ten years of age or older and under seventeen years of age at the time of the reported conduct, the department must withhold the suspect's identifying information, which we marked, under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. However, if the suspect at issue was not ten years of age or older and under seventeen years of age at the time of the reported conduct, the department may not withhold the marked information under section 552.101 in conjunction with section 58.008(e)(1). Further, we note section 58.008(e)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.008(e)(2). Thus, we will address whether the department must withhold any portion of the remaining 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 information at issue contains the date of birth of the requestor's client. The requestor has a right of access to her client's date of birth and the department may not withhold it from her on the basis of common-law privacy. *See* Gov't Code § 552.023(a) (person or 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 is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). We also note some dates of birth within the information at issue pertain to individuals who will be de-identified and thus, their privacy interests will be protected. Accordingly, except for the requestor's client's date of birth, the department must withhold all public citizens' dates of birth not pertaining to de-identified individuals under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the department determines report number 05-76195 relates to a criminal case in which an attorney compensated by the public defender is appointed, then the department must release the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that instance, the department must withhold the remaining information in report number 05-76195 under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code. If the department determines report number 05-76195 does not relate to a criminal case in which an attorney compensated by the public defender is appointed, then the department must withhold report number 05-76195 under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code. The department must release report numbers 06-67505 and 06-60937 pursuant to section 58.008(d) of the Family Code; however, in releasing these reports, the department must withhold: (1) the identifying information of the other juveniles 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 department may only withhold the other suspect's identifying information we have marked in report number 06-60937 to the extent the suspect was ten years of age or older and under seventeen years of age at the time of the reported conduct; and (2) all public citizens' dates of birth not pertaining to de-identified individuals or the requestor's client under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

A handwritten signature in black ink that reads "Britni Ramirez". The signature is written in a cursive, flowing style.

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/sb

Ref: ID# 688083

Enc. Submitted documents

c: Requestor
(w/o enclosures)