



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 5, 2018

Ms. Dawn Bracket  
Counsel for the City of Denison  
Messer Rockefeller Fort  
6371 Preston Road, Suite 200  
Frisco, Texas 75034

OR2018-00353

Dear Ms. Bracket:

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# 696203 (Ref. No. D112717NR).

The Denison Police Department (the "department") received a request for a specified incident report. 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 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.

Fam. Code § 58.008(b); *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 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). Upon review, we find the department has failed to demonstrate any portion of the submitted information depicts an individual who is ten years of age or older and under the age of seventeen as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. Therefore, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code.

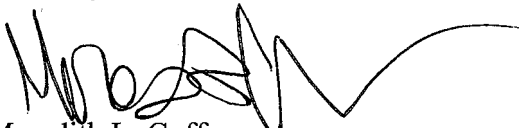
Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public 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.). Thus, the department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

You ask this office to issue a previous determination permitting the city to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. *See Gov’t Code § 552.301(a)* (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant your request on this matter. Therefore, this letter ruling authorizes the department to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is a personal right that lapses at an individual’s death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the

department to withhold dates of birth of living individuals. This previous determination is not applicable to dates of birth belonging to deceased individuals. We also note a person or a person's authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person's privacy interests. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, this previous determination is not applicable to dates of birth requested by a person or the authorized representative of a person whose date of birth is at issue. Furthermore, information filed with a court is not protected by common-law privacy. *See* Gov't Code § 552.022(a)(17); *Star-Telegram*, 834 S.W.2d at 57. Accordingly, this previous determination is not applicable to dates of birth contained in court-filed documents. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7-8 (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

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,



Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/tdw

Ref: ID# 696203

Enc. Submitted documents

c: Requestor  
(w/o enclosures)