



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 9, 2018

Mr. Pink Dickens
Assistant Criminal District Attorney
Victoria County Criminal District Attorney's Office
205 North Bridge, Suite 301
Victoria, Texas 77901-8085

OR2018-00620

Dear Mr. Dickens:

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# 690656.

The Victoria County Sheriff's Office (the "sheriff's office") received a request for a specified police report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. 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:

(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 id.* § 58.008(b). 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). Upon review, we find the submitted information does not involve a juvenile suspect, offender, or defendant engaging in delinquent conduct or conduct indicating a need for supervision for the purposes of section 58.008(b). Thus, the sheriff’s office 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 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See Gov’t Code* 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.302(e)(1)(A). You inform us you are “unable to determine whether [the criminal investigation at issue] is active or not.” You also state the case “has not resulted in a conviction or deferred adjudication.” We note section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case “that *did not* result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2) (emphasis added). Thus, having considered your representations, we find you have not demonstrated the information at issue falls within the scope of section 552.108(a)(2) of the Government Code. *See id.* § 552.301(e)(1)(A). We therefore conclude the sheriff’s office may not withhold the submitted information under section 552.108(a)(2) of the Government 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 sheriff’s office must withhold the public citizen’s date of birth you marked under section

552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the sheriff's office must release the remaining information.

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,



Patrick Mehaffy
Assistant Attorney General
Open Records Division

PM/sb

Ref: ID# 690656

Enc. Submitted documents

c: Requestor
(w/o enclosures)