



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 18, 2018

Ms. Rachel E. Klaus
Records Technician
Bastrop Police Department
104 Grady Tuck Lane
Bastrop, Texas 78602

OR2018-01137

Dear Ms. Klaus:

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# 691884.

The City of Bastrop (the "city") received a request for records pertaining to a specified address from a specified time period. You state the city has released some information. You claim the submitted information is excepted from disclosure under section 552.108 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."¹ 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

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 (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). We find case number 20101777 involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply. Therefore, the city must withhold case number 20101777 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.²

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state case numbers 20120860, 20130872, 20160939, and 20170696 pertain to active criminal investigations. Based on your representation, we conclude the release of case numbers 20160939 and 20170696 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to case numbers 20160939 and 20170696. We note, however, case numbers 20120860

²As our ruling is dispositive, we need not address your argument against disclosure of this information.

and 20130872 pertain to investigations in which the statute of limitations has expired. *See* Crim. Proc. Code, art 12.02(a)-(b). You have not informed this office that any criminal charges were filed within the limitations period. Thus, we find you failed to demonstrate the release of case numbers 20120860 and 20130872 would interfere with the detection, investigation, or prosecution of crime. Therefore, the city may not withhold case numbers 20120860 and 20130872 under section 552.108(a)(1).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state case numbers 09-01-0112, 20100671, 20110545, 20130724, 20131519, and 20160836 pertain to closed criminal investigations that did not result in convictions or deferred adjudications. Based on your representation, we agree section 552.108(a)(2) is applicable to case numbers 09-01-0112, 20100671, 20110545, 20130724, 20131519, and 20160836.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the city may withhold case numbers 20160939 and 20170696 under section 552.108(a)(1) of the Government Code and may withhold case numbers 09-01-0112, 20100671, 20110545, 20130724, 20131519, and 20160836 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 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.). Thus, the city must withhold all public citizens' dates of birth 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 or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold case number 20101777 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of the basic information, the city may withhold case numbers 20160939 and 20170696 under section 552.108(a)(1) of the Government Code and may withhold case numbers 09-01-0112, 20100671, 20110545, 20130724, 20131519, and 20160836 under section 552.108(a)(2) of the Government Code. The city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.130 of the Government Code. The city 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/tdw

Ref: ID# 691884

Enc. Submitted documents

c: Requestor
(w/o enclosures)