



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 3, 2019

Ms. Megan Rathel
Assistant City Attorney
City of Waco
P. O. Box 2570
Waco, Texas 76702-2570

OR2019-00170

Dear Ms. Rathel:

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# 751610 (Waco Ref. No. LGL-18-328).

The Waco Police Department (the "department") received a request for information pertaining to a specified incident. You state the department has released some of the requested information. You state the department will redact information pursuant to sections 552.130 and 552.147 of the Government Code.¹ You claim some of 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 representative sample of information.²

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b).

²We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 of the Government Code 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. 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 the submitted information involves juvenile offenders, so as to fall within the scope of section 58.008(b). In this instance, however, the requestor is a parent of one of the juvenile offenders. As such, the requestor has a right to inspect juvenile law enforcement records concerning this juvenile pursuant to section 58.008(d) of the Family Code. *See id.* § 58.008(d). However, section 58.008(e)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness for whom the requestor is not the authorized representative must be redacted. *See id.* § 58.008(e)(1). Thus, with the exception of information we have marked for release, the department must withhold the information you marked under 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 id.* § 58.008(e)(2). Thus, we will consider your argument under section 552.108 of the Government Code with respect to submitted information.

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: (1) 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 release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending investigation. Based upon this representation, we conclude the release of the information you marked 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 the information you marked. Therefore, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.

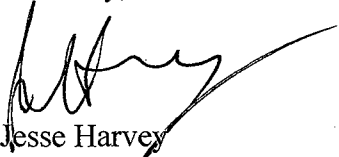
Section 552.101 of the Government of the Code also encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d at 683. The court of appeals has concluded public citizens’ dates 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 some of the remaining information pertains to de-identified individuals whose privacy interests are thus protected. Accordingly, with the exception of the dates of birth belonging to de-identified individuals, the department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. With the exception of information we have marked for release, the department must withhold the information you marked under section 58.008(e)(1) of the Family Code. With the exception of the dates of birth belonging to de-identified individuals, 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.³

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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JH/gw

Ref: ID# 751610

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a right of access to some of the information being released. See Fam. Code §§ 58.008(d), 261.201(k); Gov't Code § 552.023(a); ORD 481 at 4. Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.