



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 8, 2019

Mr. John B. Strong  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Fort Worth, Texas 76102-6311

OR2019-00464

Dear Mr. Strong:

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# 744988 (ORR# W077548).

The City of Fort Worth (the "city") received a request for two specified incident reports. The city claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the city only submitted one of the requested incident reports. We assume, to the extent any additional responsive information existed when the city received the request for information, the city has released it to the requestor. If not, then the city must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

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, the following:

(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.

...

(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 (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 id.* § 51.02(2) (defining "child" for purposes

of title 3 of Family Code). The submitted information pertains to two offenders, one of whom is an adult, and the other is a juvenile. Thus, we find the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). However, the requestor is a recruiter for the United States Navy (the "Navy"). Thus, the requestor may be an authorized representative of the juvenile offender and have access to the information at issue pursuant to section 58.008(d). *See id.* § 58.008(d). Accordingly, we must rule conditionally. If the requestor is not an authorized representative of the juvenile offender, then the city must generally withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, if the requestor is an authorized representative of the juvenile offender, then the city may not withhold the information on that ground. *See id.* § 58.008(d). Nevertheless, section 58.008(e)(2) provides information that is subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.008(e)(2). Therefore, we will consider whether the submitted information is otherwise excepted from disclosure.

However, the adult offender may be a potential enlistee in the Navy. The United States Department of Defense (the "DoD") is authorized to perform background investigations of persons seeking to enlist to determine the eligibility of applicants for acceptance into the armed services. 5 U.S.C. § 9101(b)(1)(A) (iii); *see also id.* § 9101(a)(6)(A) (DoD is a covered agency for purposes of section 9101). The Navy has a right to the criminal history record information ("CHRI") of state and local criminal justice agencies when it receives the consent of the individual being investigated for release of such information. *See id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(7) (DoD includes the Department of the Navy). CHRI is defined as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release" but does not include "identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system" or "records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality." 5 U.S.C. § 9101(a)(2).

Federal law provides the Navy's right of access to CHRI preempts state law. *Id.* § 9101(b)(4) (section 9101 "shall apply notwithstanding any other provision of law . . . of any State"). Therefore, we conclude the Navy's right of access under federal law preempts the confidentiality of section 58.008(b) of the Family Code. *See English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (state law is preempted to extent it actually conflicts with federal law); *see also La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, federal law also provides the Navy's right of access is contingent on the request being made for eligibility or retention purposes, and on receiving written consent from the individual under investigation for the release of such CHRI. *See* 5 U.S.C. § 9101(b)(1)(A)(iii), (c).

We are unable to determine whether the requestor made the request for information for recruiting purposes or whether the adult offender has provided the Navy with a signed authorization for the release of the information at issue. Accordingly, we rule conditionally. If the requestor seeks the information at issue for recruiting purposes and provides a signed written consent for release of CHRI from the adult offender, then the department must release CHRI pertaining to the adult offender. However, if the requestor does not seek the information at issue for recruiting purposes or does not provide a written consent for release of the information, then the department is not required to release CHRI pertaining to the adult offender on that ground.

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.). Section 552.023(a) of the Government Code provides a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a). Thus, if the requestor is an authorized representative of the juvenile offender, then she has a right of access to the juvenile's date of birth pursuant to section 552.023 of the Government Code, but the city must withhold the remaining dates of birth, which we have marked, 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 license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>1</sup> *See* Gov't Code § 552.130. Thus, if the requestor is an authorized representative of the juvenile offender, then the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if (1) the requestor is not an authorized representative of the juvenile offender at issue but (2) she seeks the information at issue for recruiting purposes and provides a signed written consent for release of CHRI from the adult offender, then the city must release CHRI pertaining to the adult offender, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If (1) the requestor is not an authorized representative of the juvenile offender at issue and (2) she neither seeks the information at issue for recruiting purposes nor provides a

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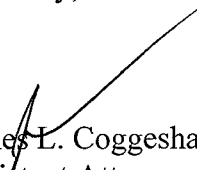
<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

signed written consent for release of CHRI from the adult offender, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the requestor is an authorized representative of the juvenile offender, then the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and under section 552.130 of the Government Code, but 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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 744988

Enc. Submitted documents

c: Requestor  
(w/o enclosures)