



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 4, 2019

Ms. Jessika J. Velasquez  
Counsel for the City of Watauga  
Evans, Daniel, Moore, Evans & Biggs  
115 West Second Street, Suite 202  
Fort Worth, Texas 76102

OR2019-03191

Dear Ms. Velasquez:

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# 749069 (ORR 18-634).

The Watauga Police Department (the "department"), which you represent, received a request for information pertaining to specified incidents. 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. This section encompasses section 261.201 of the Family Code, which provides, in pertinent part, as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert Exhibit B is subject to chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, however, we find you have failed to demonstrate the information at issue is a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. Therefore, we conclude section 261.201 is not applicable to Exhibit B, and it may not be withheld on that basis.

Section 552.101 of the Government Code also 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:

...

(2) any information that is excepted from required disclosure under [the Act] or any other law.

*Id.* § 58.008(b), (d), (e)(2); *see id.* § 51.03(a) (defining “delinquent conduct” 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. 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). Exhibit C involves a juvenile offender, so as to fall within the scope of section 58.008(b). However, the requestor may be a parent or guardian of the juvenile offender at issue, and may have access to the information at issue pursuant to section 58.008(d) as the child’s parent. *See id.* § 58.008(d). Therefore, we must rule conditionally. If the requestor is not a parent or guardian of the juvenile offender, then the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the requestor is a parent or guardian of the juvenile, then the department may not withhold Exhibit C on that ground. *See id.* However, 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 whether the remaining information is otherwise excepted from disclosure.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The Third 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.). This office has also found common-law privacy generally protects the identifying information of a juvenile victim of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. We note the requestor has a right of access to private information pertaining to herself and her minor child. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the department must withhold the date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, because we are unable to determine whether the requestor is the parent of the minor child whose privacy interests are at issue, we must rule conditionally. If the requestor is the parent of the minor child at issue, then the department may not withhold the information relating to this individual under section 552.101 in conjunction with common-law privacy. If the requestor is not the parent of the minor child at issue, then the department must withhold the information relating to this individual, which we have marked, under section 552.101 in conjunction with common-law privacy. In either

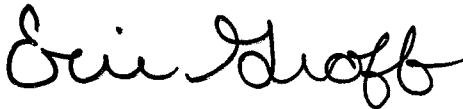
instance, the department must withhold the date of birth it marked pertaining to the remaining individual under section 552.101 in conjunction with common-law privacy.

In summary, if the requestor is not a parent of the juvenile offender in Exhibit C, then the department must (1) withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code, and (2) withhold the public citizen's date of birth it marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is a parent of the individual at issue, the department must withhold the date of birth it marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department 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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/gw

Ref: ID# 749069

Enc. Submitted documents

c: Requestor  
(w/o enclosures)