



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 4, 2019

Ms. Alicia K. Kreh  
Counsel for the City of Euless  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2019-03225

Dear Ms. Kreh:

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# 748765.

The Euless Police Department (the "department"), which you represent, received a request for all records involving the requestor. You state you will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You further state you will withhold certain information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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<sup>1</sup>Section 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 a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

Section 552.101 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 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* Fam. Code § 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* 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). Upon review, we find some of 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 one of the juvenile offenders, who is now an adult. As such, the requestor has a right to inspect juvenile law enforcement records concerning himself 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). Accordingly, upon review, we find with the exception of the information we have marked for release, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. However, we find you have failed to demonstrate the applicability of section 58.008(e)(1) to the remaining information at issue, and the department may not withhold the information we have marked for release on that basis. 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 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 the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.). We note one of the individuals whose dates of birth you seek to withhold has been de-identified pursuant to section 58.008(e)(1) of the Family Code. Therefore, the privacy interests in this date of birth are sufficiently protected, and the department may not withhold it under common-law privacy. We note the requestor has a right of access to his own date of birth pursuant to section 552.023 of the Government Code, and this information may not be withheld from him under common-law privacy. *See* Gov’t Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to

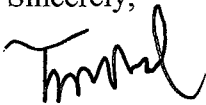
protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked and the dates of birth belonging to identifiable individuals under section 552.101 in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information you marked is highly intimate or embarrassing to an identifiable individual and not of legitimate public concern. Thus, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

In summary, with the exception of the information we have marked for release, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. The department must withhold the information we have marked and the dates of birth belonging to identifiable individuals under section 552.101 in conjunction with common-law privacy. The department must release the remaining information to this requestor.<sup>3</sup>

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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/som

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<sup>3</sup>We note the requestor in this case has a right of access to information that would otherwise be confidential with respect to the general public. See Fam Code § 58.008(d). See also Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

Ref: ID# 748765

Enc. Submitted documents

c: Requestor  
(w/o enclosures)