KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 15, 2019

Mr. David V. Overcash
Counsel for the City of Anna
Wolfe, Tidwell & McCoy, L. L. P.
2591 Dallas Parkway, Suite 300
Frisco, Texas 75034

OR2019-07269

Dear Mr. Overcash:

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# 761556 (City File No. W001722-020119).

The City of Anna (the "city"), which you represent, received a request from the same requestor for information related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 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. 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:
>
> . . .
>
> (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)(4), (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 id.* § 51.02(2) (defining "child" for purposes of title 3 of Family Code). 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 parent of the juvenile offender at issue and has access to the information at issue pursuant to section 58.008(d). *See id.* § 58.008(d). Therefore, the city may not withhold the submitted information from the requestor under section 552.101 on the basis of section 58.008(b). *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). Thus, we will consider whether the submitted information is otherwise excepted from disclosure.

Section 552.108(a) 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 the release of the information at issue 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, 710 (Tex. 1977). The city states the information it has marked under section 552.108(a)(1) relates to a pending criminal investigation. Based on this representation, we conclude the release of this information 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the city may withhold the information it has marked under section 552.108(a)(1) of the Government Code.

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. *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.). Accordingly, the city must generally withhold all public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. We note the information at issue includes the dates of birth of the requestor, her child, and her spouse. Section 552.023(a) of the Government Code states that a person or a person's authorized representative has a special right of access to information that is excepted form public disclosure under laws intended to protect that person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the requestor has a right of access to her own and her child's dates of birth as well as her spouse's date of birth if she is acting as her spouse's authorized representative. Therefore, the city may not withhold the date of birth or her child under section 552.101 in conjunction with common-law privacy. Furthermore, if the requestor is acting as her spouse's authorized representative, then the city may not withhold his date of birth under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as her spouse's authorized representative, then the city must withhold his date of birth under section 552.101 in conjunction with common-law privacy. In either case, the city must withhold the remaining public citizen's date of birth it marked under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 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. *See* Gov't Code § 552.130(a). We note section 552.130 protects privacy interests. As noted above, the requestor may be her spouse's authorized representative, and may have a right of access to information pertaining solely to her that would otherwise be confidential. *See id.*

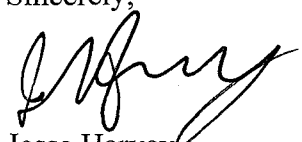
§ 552.023(a); ORD 481 at 4. Accordingly, if the requestor is acting as her spouse's authorized representative, then the city may not withhold the motor vehicle record information we have marked under section 552.130. If the requestor is not acting as her spouse's authorized representative, then the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city may withhold the information it has marked under section 552.108(a)(1) of the Government Code. The city must generally withhold all public citizens' dates of birth that do not belong to the requestor or her child under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information the city marked under section 552.130 of the Government Code. However, if the requestor is acting as her spouse's authorized representative, then the city may not withhold his date of birth under section 552.101 of the Government Code in conjunction with common-law privacy or the motor vehicle record information we have marked under section 552.130. 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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JH/jxd

Ref: ID# 761556

Enc. Submitted documents

c: Requestor
(w/o enclosures)