



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 30, 2019

Mr. Brandon S. Shelby  
City Attorney  
City of Sherman  
P.O. Box 1106  
Sherman, Texas 75091-1106

OR2019-11472

Dear Mr. Shelby:

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# 762610 (ORR# 3813).

The Sherman Police Department (the "department") received a request for call log reports during a specified time period. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.148 of the Government Code.<sup>1</sup> We have considered the exceptions the department claims 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:

(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;

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<sup>1</sup>Although the department does not raise section 552.130 of the Government Code in its brief, we understand the department to raise this exception based on its markings.

(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.

Fam. Code § 58.008(b); *see also 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. 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 information the department marked involves juvenile offenders, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Accordingly, the department must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). Some of the remaining information, which we marked, was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the department. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

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. 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.). Upon review, we find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 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. *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

The department argues the remaining information is protected by section 552.148 of the Government Code. Section 552.148 provides the following:

- (a) In this section, "minor" means a person younger than 18 years of age.
- (b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from [required disclosure]:
  - (1) the name, age, home address, home telephone number, or social security number of the minor;
  - (2) a photograph of the minor; and
  - (3) the name of the minor's parent or legal guardian.

*Id.* § 552.148. Section 552.148 specifically applies to information maintained by a municipality “for purposes related to the participation by a minor in a recreational program or activity[.]” *Id.* § 552.148(b). Because the submitted information is not related to participation in a recreational program or activity, section 552.148 of the Government Code does not apply, and the department may not withhold any of the remaining information on that basis.

In summary, the department must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code and must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must the information we marked, as well as all public citizens’ dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. 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,



Emily Buchanan  
Attorney  
Open Records Division

EB/gw

Ref: ID# 762610

Enc. Submitted documents

c: Requestor  
(w/o enclosures)