



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 12, 2019

Mr. Adam Anderson  
Assistant County Attorney  
Montgomery County Attorney's Office  
501 North Thompson Street, Suite 300  
Conroe, Texas 77301

OR2019-18892

Dear Mr. Anderson:

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# 781738 (ORR File# 19PIA249).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for information related to a specified incident. 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 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;

(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(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of Family Code). Section 58.008(b) applies 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). We find the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). In this instance, however, you state the requestor is a parent or legal guardian of the juvenile offender at issue and, thus, we find the requestor has a right of access to the information at issue pursuant to section 58.008(d) of the Family Code, and the sheriff's office may not withhold the submitted

information from this requestor under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. *See id.* § 58.008(d). Section 58.008(e)(1) states any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's child must be redacted. *See id.* § 58.008(e)(1). We note the submitted information involves a juvenile witness who may be a minor child of the requestor. Therefore, we must rule conditionally. To the extent the requestor is not a parent or legal guardian of the juvenile witness at issue, then the sheriff's must withhold the identifying information of the juvenile witness, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. *Id.* §§ 58.008(d), (e)(1). However, to the extent the requestor is a parent or legal guardian of the juvenile witness at issue, the sheriff's office may not withhold this information under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. Further, section 58.008(e)(2) states any information excepted from required disclosure must be redacted. *See id.* § 58.008(e)(2). Thus, we will consider whether the remaining information is excepted from disclosure.

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. *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.). However, we note the remaining information includes a date of birth belonging to an individual you state is the requestor's minor child. Furthermore, as noted above, another involved individual may be the requestor's minor child. The requestor has a right of access to otherwise private information related to his minor children and it may not be withheld from him under common-law privacy. *See Gov't Code* § 552.023(a) ("a person or 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 a 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 individual requests information concerning herself). Additionally, we note one of the dates of birth relates to an individual who may be de-identified and whose privacy interests are thus protected. Accordingly, with the exception of the dates of birth belonging to the requestor's minor child or minor children, the sheriff's office must withhold the remaining identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the requestor is not a parent or legal guardian of the juvenile witness at issue, then the sheriff's must withhold the identifying information of the juvenile witness, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. With the exception of the date

of birth belonging to the requestor's minor child or minor children, the sheriff's office must withhold the remaining identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must release the remaining information to this requestor.<sup>1</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/be

Ref: ID# 781738

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the requestor has a right of access to the information being released. See Fam. Code § 58.008(d); Gov't Code § 552.023(a); ORD 481 at 4. Thus, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor.