



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 30, 2019

Ms. Amanda Pell
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2019-20823

Dear Ms. Pell:

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# 784461 (ORR# 14736).

The Baytown Police Department (the "department") received a request for a specified case number. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 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 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* Fam Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). 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 at issue, and is now an adult. Thus, the requestor has a right to inspect juvenile law enforcement records

concerning herself pursuant to section 58.008(d) of the Family Code. *See id.* § 58.008(d). Accordingly, the department 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. However, section 58.008(e)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness other than the requestor must be redacted. *See id.* § 58.008(e)(1). Accordingly, the department must withhold the personally identifiable information about a juvenile suspect, offender, victim, or witness other than the requestor, which it has marked, 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) 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 the department's remaining argument against release of the remaining information.

Section 552.101 of the Government of the Code also encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d at 683. The 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.). We note the requestor has a right of access to her child's date of birth. *See Gov't Code* § 552.023(a); ORD 481 at 4. We also note some of the remaining information pertains to de-identified individuals whose privacy interests are, thus, protected. Accordingly, with the exception of the requestor's date of birth and the dates of birth belonging to de-identified individuals, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the information it 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 requestor's date of birth and the dates of birth belonging to de-identified individuals, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information to this requestor.¹

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.

¹We note the requestor has a right of access to the information at issue pursuant to section 58.008(d) of the Family Code. *See Fam. Code* § 58.008(d). If the department receives another request for this 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).

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# 784461

Enc. Submitted documents

c: Requestor
(w/o enclosures)