



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 6, 2019

Mr. Micah D. Fernandes  
Counsel for the City of Watauga  
Russell Rodriguez Hyde Bullock LLP  
1633 Williams Drive, Building 2, Suite 200  
Georgetown, Texas 78628

OR2019-25004

Dear Mr. Fernandes:

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# 783298 (City ID# PIA 19-611/RT 1516).

The Watauga Police Department (the "department"), which you represent, received a request for incident reports related to a specified type of incident involving the requestor and another named individual during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 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. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert the present requests require the department to compile unspecified law enforcement records concerning the named individual. We note, however, the requestor also seeks reports involving herself and the named individual. We further note the named individual is the requestor's minor child. The instant request seeks specified records involving the requestor and her minor child, and the requestor has a right of access to private information pertaining to herself and her minor child pursuant to section 552.023 of the Government Code. *See Gov't Code § 552.023(a)* (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); *Open Records Decision No. 481 at 4* (1987) (privacy theories not implicated when individuals request information concerning themselves). You have submitted law enforcement records that involve the requestor and her minor child. Because the requestor has a right of access to the submitted information, the department may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis.

Section 552.101 of the Government Code also 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:

...

(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 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). Upon review, we agree some of the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). In this instance, however, the requestor is a parent of the juvenile offender. As such, the requestor has a right to inspect juvenile law enforcement records concerning this juvenile pursuant to section 58.008(d)(4) of the Family Code. *See id.* § 58.008(d)(4). However, section 58.008(e)(1) provides that any identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's child must be redacted. *Id.* § 58.008(e)(1). Accordingly, the department must withhold the identifying information of the juvenile witness we have marked under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. Additionally, 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. *Id.* § 58.008(e)(2). Thus, we will consider whether the remaining information at issue is otherwise excepted from disclosure. Upon review, we find the remaining information in Exhibit B, as well as the information in Exhibit C, does not list a juvenile as a suspect, offender, or defendant. Thus, you have not demonstrated the remaining information involves juvenile conduct for purposes of section 58.008 of the Family Code. Accordingly, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

As stated above, section 552.101 of the Government of the Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d 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 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.). As noted above, the requestor has a right of access to her own otherwise private information and otherwise private information related to her minor child, and this information may not be withheld from her under common-law privacy. *See* Gov't Code § 552.023(a); ORD 481 at 4. We further note the requestor may have a right of access to her spouse's date of birth. Accordingly, if the requestor is not acting as the authorized representative of her spouse, the department must withhold this individual's date of birth under section 552.101 of the Government Code on the basis of common-law privacy. Conversely, if the requestor is acting as an authorized representative of her spouse, the department must release this individual's date of birth. In either event, the department must withhold the remaining date of birth not belonging to the requestor or her minor child under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information is not confidential under common-law privacy, and the department may not withhold it from this requestor under section 552.101 on that ground.

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. We note, however, section 552.130 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to her own motor vehicle record information and her minor child's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from the requestor under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the identifying information of the juvenile witness we have marked under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. If the requestor is not acting as the authorized representative of her spouse, the department must withhold this individual's date of birth under section 552.101 of the Government Code on the basis of common-law privacy. The department must withhold the remaining date of birth not belonging to the requestor or her minor child under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information

we have marked under section 552.130 of the Government Code. The department 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/gw

Ref: ID# 783298

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

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