



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 15, 2019

Mr. Jeffrey C. Monk  
Administration Manager  
Houston Police Department  
1200 Travis Street, 10th Floor  
Houston, Texas 77002-6000

OR2019-28878

Dear Mr. Monk:

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# 791293 (Ref. No. 19-08421).

The Houston Police Department (the "department") received a request for all reports involving the requestor. 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 information made confidential by section 58.008 of the Family Code.<sup>1</sup> Section 58.008 provides, in part:

(b) Except as provided by Subsection (c), 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;

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<sup>1</sup> Although you raise section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 21. Thus, we understand you to raise section 58.008(b) of the Family Code.

(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.

Act of May 14, 2019, 86th Leg., R.S., H.B. 1760, § 4 (to be codified at Fam. Code § 58.008(b)); Act of May 21, 2019, 86th Leg., R.S., S.B. 2135, § 3 (to be codified at Fam. Code § 58.008(d)); Fam. Code § 261.201(e); *see also* Fam. Code § 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* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Upon review, we find

the submitted information involves juvenile offenders, so as to fall within the scope of section 58.008(b). Thus, the submitted information is generally confidential under section 58.008(b) of the Family Code. In this instance, however, the requestor is one of the juvenile offenders, and is now an adult. As such, the requestor has a right of access to the submitted information pursuant to section 58.008(d) of the Family Code, and the department may not withhold it under section 552.101 of the Government code in conjunction with section 58.008(b) of the Family Code. *See* Act of May 21, 2019, 86th Leg., R.S., S.B. 2135, § 3 (to be codified at Fam. Code § 58.008(d)-(d-1)). Nevertheless, section 58.008(e)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's client must be redacted. *See* Fam. Code § 58.008(e)(1). Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. Further, we note 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 whether the remaining information is otherwise 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.). We note the requestor has a right of access to her own date of birth and it may not be withheld from her under section 552.101 on the basis of common-law privacy. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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). We also note the privacy interests of the individuals who will be de-identified under section 58.008(e)(1) of the Family Code are protected and the department may not withhold their dates of birth under section 552.101 on that basis. Accordingly, the department must withhold the date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.<sup>2</sup> *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.

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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481, 480 (1987), 470 (1987).

In summary, the department: must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code; must withhold the date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy; must withhold the motor vehicle record information we marked under section 552.130 of the Government Code; and must release the remaining information to this requestor.<sup>3</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,



Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/be

Ref: ID# 791293

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> As noted above, the requestor has a special right of access to the information being released in this instance. See Fam. Code § 58.008(d); see also Gov't Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. We also note the remaining information includes a social security number to which the requestor does not have a right of access. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).