



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2019

Mr. Trenton M. Dietz
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2019-32861

Dear Mr. Dietz:

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# 797819 (ORR 19-439).

The Abilene Police Department (the "department") received a request for a specified police report. 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 other statutes, such as section 261.201(a) of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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); *see also id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). You assert the submitted information is subject to section 261.201. Upon our review, however, we find you have failed to demonstrate the information at issue involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 of the Family Code, or that this information was used or developed in an investigation under chapter 261. Accordingly, we conclude the department may not withhold any portion of the submitted information under section 552.101 on this 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 (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;

(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:

...

(3) the child[.]

...

(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)); Fam. Code § 58.008(d)(3), (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. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. 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, the requestor is the juvenile offender. As such, the requestor has a right to inspect juvenile law enforcement records concerning himself pursuant to section 58.008(d) of the Family Code. *See id.* § 58.008(d). However, section 58.008(e)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness for whom the requestor is not the authorized representative must be redacted. *See id.* § 58.008(e)(1). Accordingly, upon review, we find the department must withhold the identifying information of the juveniles who are not the requestor under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. 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). Therefore, 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 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 otherwise private information pertaining to himself under section 552.023 of the Government Code and it may not be withheld from him under section 552.101 in conjunction with common-law privacy. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). We further note some of the dates of birth at issue relate to individuals who will be de-identified, and whose privacy interests are, thus, protected. Accordingly, the department must withhold the remaining identifiable public citizen’s date of birth under section 552.101 of the Government Code 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.

In summary, the department must withhold the identifying information of the juveniles who are not the requestor 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 dates of birth belonging to the requestor and individuals who have been de-identified, the department must withhold the remaining identifiable public citizen's date 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 must 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.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eb

Ref: ID# 797819

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ 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, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.