



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2020

Mr. Robert Carroll
Senior Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2020-00641

Dear Mr. Carroll:

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# 805212 (ID# P000747-081419).

The City of Odessa (the "city") received a request for a specified police report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code.¹ 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. Section 552.101 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 We note, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because sections 552.101, 552.130, and 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

(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)(1)-(4), (e); *see 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) 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 juvenile offenders, so as to fall within the scope of section 58.008(b). In this instance, however, the requestor is the legal guardian of one of the juvenile offenders. As such, the requestor has a right to inspect juvenile law enforcement records concerning this juvenile 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 city must withhold the identifying information we marked under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code.² 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, 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office also has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). 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.).

We note the requestor has a right of access to the date of birth of the minor child for whom the requestor is the legal guardian pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In addition, because the other juvenile offender has been de-identified pursuant to section 58.008(e)(1) of the Family Code, the privacy interest in his date of birth is sufficiently protected. Thus, with the exception of the dates of birth belonging to the minor child for whom the requestor is the legal guardian and the de-identified juvenile offender, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Further, upon review, we conclude the information we marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.³ Gov't Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Upon review, we find some of the remaining information, which we marked, pertains to a peace officer and is held by the city in a non-employment capacity. Thus, to the extent the officer elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information we marked under section 552.1175 of the Government Code.

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 id.* § 552.130(a). We note section 552.130 protects privacy interests. Accordingly, the requestor has a right of access to the motor vehicle record information of the minor child for whom the requestor is the legal guardian pursuant to section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. However, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the credit card numbers we marked under section 552.136 of the Government Code.

In summary, the city must withhold the identifying information we 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 dates of birth belonging to the minor child or whom the requestor is the legal guardian and the de-identified juvenile offender, the city must withhold all public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the officer elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information we indicated under section 552.1175 of the Government Code. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must withhold the credit

³ 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 (1987), 480 (1987), 470 (1987).

card numbers we marked under section 552.136 of the Government Code. The city must release the remaining information.⁴

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/rm

Ref: ID# 805212

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ We note the requestor in this case has a right of access to information that would otherwise be confidential with respect to the general public. *See* Fam. Code § 58.008(d). *See also* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).