



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 21, 2020

Mr. Christopher K. Austria  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Fort Worth, Texas 76102-6311

OR2020-01850

Dear Mr. Austria:

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# 807353 (PIR No. W092720).

The Fort Worth Police Department (the "department") received a request for information pertaining to a named individual. The department claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions 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 of the Government Code encompasses section 58.008 of the Family Code, which provides, in part, the following:

(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:

...

(2) a criminal justice agency, as defined by Section 411.082, Government Code[.]

Fam. Code § 58.008(b), (d)(2); *see also 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. 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, with the exception of report numbers 98211073 and 99440540, we agree the remaining reports in Exhibit D involve a juvenile offender, so as to fall within the scope of section 58.008(b). However, report numbers 98211073 and 99440540 do not involve a juvenile identified as a suspect, offender, or defendant. Therefore, we find the department has failed to demonstrate the applicability of section 58.008 of the Family Code to any portion of report numbers 98211073 and 99440540, and these reports may not be withheld under section 552.101 of the Government Code on this basis.

However, we note the requestor is a representative of Second District of the Nebraska State Probation Department (the “probation department”). Section 58.008(d)(2) of the Family Code gives a “criminal justice agency,” as defined by section 411.082 of the Government Code a right of access to juvenile law enforcement records. *See id.* § 58.008(d)(2). Section 411.082 of the Government Code defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” Gov’t Code § 411.082(3)(A). Thus, we find the requestor is requesting the information on behalf of a criminal justice agency as provided by section 58.008(d) of the Family Code.

However, we note report numbers 98451893 and 99440540 list the named individual as a complainant in the incidents at issue. Although the requestor is a representative of the probation department, the requestor is seeking information about a complainant and not the juvenile offender listed in report numbers 98451893 and 99440540. Thus, we conclude the requestor does not have a right of access to report numbers 98451893 and 99440540 under section 58.008(d) of the Family Code. Therefore, report numbers 98451893 and 99440540

are confidential under section 58.008(b) of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>1</sup>

Nonetheless, the requestor generally has a right of access under section 58.008(d) to the remaining submitted reports in Exhibit D. Accordingly, the department may not withhold the remaining reports under section 552.101 in conjunction with section 58.008(b) of the Family Code.

Section 552.101 of the Government Code also encompasses 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 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.

The present request requires the department to compile unspecified law enforcement records concerning a named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Thus, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note the department has submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and it may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

However, as noted above, the requestor is a representative of the probation department. Section 411.089(a) of the Government Code provides that "[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any criminal history record

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<sup>1</sup>We note report numbers 98451893 and 99440540 do not contain criminal history information ("CHRI") of the individual named in the request for information, we do not address whether the requestor, who is a representative of the probation department, has a right of access to CHRI in these reports under section 411.087(a)(2) of the Government Code. *See* Gov't Code § 411.087(a)(2); *see also id.* § 411.089.

information maintained by the [Texas Department of Public Safety] about a person.” *See* Gov’t Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part the following:

- (a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [Texas Department of Public Safety] criminal history record information CHRI maintained by the [Texas Department of Public Safety] that relates to another person is authorized to:

...

- (2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

*Id.* § 411.087(a)(2). We note CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

We understand the probation office is a criminal justice agency, and the requestor intends to use the CHRI for a criminal justice purpose. Thus, the requestor is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code. We note a statutory right of access prevails over a claim under common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409,415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in the Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). We also note section 552.108 of the Government Code does not apply to this information. Accordingly, to the extent the department maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, we conclude the department must make available to the requestor the CHRI that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. To the extent it exists, the department must withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

As stated above, section 552.101 of the Government 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. The Third 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.). Upon review, we conclude some of the information at issue meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold all public citizens' dates 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. Upon review, we find portions of the submitted information, which we have indicated, consist of motor vehicle record information subject to section 552.130. Therefore, the department must generally withhold the information we have indicated under section 552.130.

As previously noted, the requestor has a statutory right of access to a portion of Exhibit D under section 58.008(d)(2) of the Family Code. A specific statutory right of access prevails over general exceptions to disclosure under the Act. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Therefore, we must address the conflict between the access provided under section 58.008(d)(2) and the confidentiality provided under section 552.130. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar*, 521 S.W.2d 277. In this instance, section 58.008(d)(2) generally applies to all juvenile law enforcement records, while section 552.130 specifically protects motor vehicle record information. Thus, we find the confidentiality provided by section 552.130 is more specific than the general right of access provided by section 58.008(d)(2). Accordingly, the department must withhold the motor vehicle record information we have indicated, including in Exhibit D, under section 552.130 of the Government Code

In summary, the department must withhold report numbers 98451893 and 99440540 under section 58.008(b) of the Family Code in conjunction with section 552.101 of the Government Code. To the extent the department maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, we conclude the department must make available to the requestor the CHRI that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. To the extent it exists, the department must withhold any remaining information 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 indicated, including in Exhibit D, under section 552.130 of the Government Code. 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.<sup>2</sup>

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<sup>2</sup>We note the information being released in this instance includes information that is confidential with respect to the general public. Therefore, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

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/be

Ref: ID# 807353

Enc. Submitted documents

c: Requestor  
(w/o enclosures)