



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 20, 2020

Mr. Wes Mau  
Criminal District Attorney  
Hays County Criminal District Attorney's Office  
712 South Stagecoach Trail, Suite 2057  
San Marcos, Texas 78666

OR2020-08774

Dear Mr. Mau:

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# 824152 (Ref#20-0109).

The Hays County Criminal District Attorney's Office (the "district attorney's office") received a request for a specified affidavit. 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 representative sample of information.<sup>1</sup>

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

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This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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.

Fam. Code § 58.008(b); *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 ten years old and less than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We note section 58.008(b) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Upon review, we find you have failed to demonstrate the submitted information involves a child engaged in delinquent conduct or conduct indicating a need for supervision, so as to fall within the scope of section 58.008(b). Accordingly, the district attorney’s office may not withhold the submitted information under section 552.101 in conjunction with section 58.008(b).

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part, the following:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

*Id.* § 261.201(a), (k), (l)(2). The submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect and falls within the scope of section 261.201. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). In this instance, however, the submitted information indicates the requestor is a parent of the child victim listed in the information at issue and is not the individual alleged to have committed the suspected abuse or neglect. *See id.* § 261.201(k). Thus, the information at issue may not be withheld from this requestor on the basis of section 261.201(a). *Id.* Section 261.201(l)(2), however, states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your remaining arguments against disclosure.

Section 552.101 of the Government Code also encompasses article 57.02 of the Code of Criminal Procedure. Article 57.02 provides that a completed pseudonym form is confidential and may not be disclosed to any person other than a defendant in the case or the defendant’s attorney, except by court order. Crim. Proc. Code art. 57.02. Upon review, we find the submitted information does not include a pseudonym form. Accordingly, article 57.02 is not applicable and the submitted information may not be withheld on this basis.

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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* 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.). Additionally, we note the doctrine of common-law privacy generally protects the identifying information of a complainant in certain situations based on the facts of the case, as well as the identifying information of juvenile victims of abuse and neglect. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982); *cf.* Fam. Code § 261.201.

You seek to withhold information under common-law privacy. However, we note the requestor is a parent of one of the individuals whose privacy rights are implicated. Thus, the requestor has a special right of access to her own information and the information of her minor child that would ordinarily be withheld to protect the requestor's and the child's privacy interests. *See* Gov't Code § 552.023(a)-(b) (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 individual requests information concerning himself). Accordingly, the district attorney's office may not withhold the information pertaining to the requestor or her minor child under section 552.101 in conjunction with common-law privacy. Upon review, we determine the district attorney's office must withhold the public citizen's date of birth we marked under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is information pertaining to an individual other than the requestor or her minor child that is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district attorney's office may not withhold the remaining information under section 552.101 on that basis. As no further exceptions have been raised, the district attorney's office must release the remaining information to this requestor.<sup>2</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

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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. *See* Fam. Code § 261.201(k). Therefore, if the district attorney's office receives another request for this information from an individual who does not have such a right of access, the district attorney's office must again seek a ruling from this office.

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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,

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/mo

Ref: ID# 824152

Enc. Submitted documents

c: Requestor  
(w/o enclosures)