



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 28, 2020

Mr. Nathan Brown
Assistant City Attorney
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

OR2020-12027

Dear Mr. Brown:

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# 824609 (ORR# 641-20).

The New Braunfels Police Department (the "department") received a request for a specified incident report. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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, the following:

(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 and 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:

(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), (e); *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). We find the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). However, the requestor may be a parent or guardian of the juvenile offender at issue. Thus, we must rule conditionally. If the requestor is not a parent or guardian of the juvenile offender, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the requestor is a parent or guardian of the juvenile offender, then she has access to the information at issue pursuant to section 58.008(d) of the Family Code and the department may not withhold it under

section 552.101 on the basis of section 58.008(b). *See id.* § 58.008(d). In that situation, the department must withhold the personally identifiable information concerning the juvenile witness in the submitted report under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. *Id.* § 58.008(e)(1). In addition, section 58.008(e)(2) provides information that is subject to any other exception to disclosure under the Act or other law must 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. *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.). If the requestor is a parent or guardian of the juvenile offender, then she has a right of access to the juvenile offender's date of birth pursuant to section 552.023 of the Government Code. *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). In addition, we note the juvenile witness at issue has been de-identified pursuant to section 58.008(e)(1) of the Family Code. Therefore, the privacy interests in that individual's date of birth is sufficiently protected, and the department may not withhold it under common-law privacy. Nevertheless, the department must withhold the remaining 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.¹ *See Gov't Code* § 552.130. The department must withhold the submitted driver's license numbers under section 552.130 of the Government Code.

In summary, if the requestor is not a parent or guardian of the juvenile offender, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the requestor is a parent or guardian of the juvenile offender, then the department must (1) withhold the personally identifiable information concerning the juvenile witness in the submitted report under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code; (2) with the exception of the dates of birth of the juvenile offender and witness, withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (3) withhold the

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

submitted driver's license numbers under section 552.130 of the Government Code; and (4) release the remaining information.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/gw

Ref: ID# 824609

Enc. Submitted documents

c: Requestor
(w/o enclosures)