



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2020

Ms. Delietrice Henry
Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2020-13158

Dear Ms. Henry:

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# 824801 (ORR# P006855-020720).

The Plano 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. This section encompasses section 58.001 of the Family Code, which provides, in relevant part, as follows:

(c) A law enforcement agency shall forward information, including fingerprints, relating to a child who has been taken into custody under Section 52.01 [of the Family Code] by the agency to the Department of Public Safety for inclusion in the juvenile justice information system created under Subchapter B, but only if the child is referred to juvenile court on or before the 10th day after the date the child is taken into custody under Section 52.01. . . . Except as provided by Subsection (f), . . . after the 90th day after the date the child successfully completes a first offender program under Section 52.031 [of the Family Code], the law enforcement agency

shall destroy all information, including photographs and fingerprints, relating to the child.

(d) If information relating to a child is contained in a document that also contains information relating to an adult and a law enforcement agency is required to destroy all information relating to the child under this section, the agency shall alter the document so that the information relating to the child is destroyed and the information relating to the adult is preserved.

(e) The deletion of a computer entry constitutes destruction of the information contained in the entry.

(f) A law enforcement agency may maintain information relating to a child after the 90th day after the date the child successfully completes a first offender program under Section 52.031 only to determine the child's eligibility to participate in a first offender program.

Id. 58.001(c)-(f); *see also id.* § 52.01 (providing when a child may be taken into custody). Section 52.031 of the Family Code provides for a First Offender Program, which is a youth diversion program. *See id.* § 52.031. Thus, except as provided by section 58.001(f) of the Family Code, section 58.001(c) of the Family Code requires a law enforcement agency to destroy law enforcement records relating to a child who has successfully completed a first offender program pursuant to section 52.031 of the Family Code. *See id.* § 52.031, 58.001(c), (f). The department indicates one of the offenders at issue in the submitted offense report successfully completed the terms of a First Offender Program for the underlying offense pursuant to section 52.031 of the Family Code. Accordingly, we must rule conditionally. To the extent the submitted information identifies a child who has successfully completed a first offender program for the offense at issue pursuant to section 52.031 of the Family Code, the department must withhold the identifying information relating to that child under section 552.101 of the Government Code in conjunction with section 58.001(c) of the Family Code.¹ *See* Attorney General Opinion DM-435 (1997). To the extent the submitted information does not identify a child who has successfully completed a first offender program for the offense at issue pursuant to section 52.031 of the Family Code, the department may not withhold the information identifying that child under section 552.101 in conjunction with section 58.001(c). In that situation, we will address the department's arguments to withhold the submitted information.

Section 552.101 of the Government Code also 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

¹ As our ruling is dispositive, we do not address the arguments of the department to withhold this information.

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:

...

(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.

Fam. Code § 58.008(b), (d)(3), (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). We understand the department to assert the submitted information is subject to section 58.008(b).² 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

² Although the department raises section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 21, 2017 Tex. Sess. Law Serv. 3173, 3187.

information involves juvenile offenders, so as to fall within the scope of section 58.008(b). However, the requestor, who is now an adult, is one of the juvenile offenders at issue and has access to the information at issue pursuant to section 58.008(d). *See id.* § 58.008(d). Therefore, the department may not withhold the submitted information from the requestor under section 552.101 on the basis of section 58.008(b). *See id.* § 58.008(d). Nevertheless, the department must withhold the personally identifiable information of the other juvenile offenders under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. *See 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.). The requestor has a right of access to her own 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, because the other juvenile offenders have been de-identified pursuant to section 58.008(e)(1) of the Family Code, the privacy interests in their dates of birth are sufficiently protected, and the department may not withhold them 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.³ *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 submitted information identifies a child who has successfully completed a first offender program for the offense at issue pursuant to section 52.031 of the Family Code, then the department must withhold the identifying information relating to that child under section 552.101 of the Government Code in conjunction with section 58.001(c) of the Family Code. If the submitted information does not identify a child who has successfully completed a first offender program for the offense at issue pursuant to section

³ 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).

52.031 of the Family Code, then the department must (1) withhold the personally identifiable information of the juvenile offenders, other than the requestor, 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 requestor and the other juvenile offenders, withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (3) withhold the 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/be

Ref: ID# 824801

Enc. Submitted documents

c: Requestor
(w/o enclosures)