



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 16, 2020

Mr. Eric C. Farrar  
Counsel for the City of Humble  
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2727 Allen Parkway, Suite 600  
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OR2020-26172

Dear Ms. Farrar:

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# 848618 (ORR# COHM20-024).

The City of Humble (the "city"), which you represent, received a request for information pertaining to two named individuals. The city states it will withhold information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> The city claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 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 encompasses section 58.008(b) of the Family Code, which provides as follows:

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:

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<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

- (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 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. *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). Upon review, we find incident report number 04-016827 involves a juvenile offender, so as to fall within the scope of that section. The exceptions in section 58.008 do not appear to apply. Therefore, the city must withhold incident report number 04-016827 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>2</sup> However, the remaining information is not confidential under section 58.008(b), and the city may not withhold it under section 552.101 on that ground.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The city states the remaining information it has indicated under section 552.108(a)(2) pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*), including the address is the location of the crime or premises involved. Thus, with the exception of basic information, the city may withhold the remaining information it has indicated under section 552.108(a)(2) of the Government Code.

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).

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<sup>2</sup> As our ruling is dispositive, we do not address the other argument of the city to withhold this information.

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 city must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or 552.1175 of the Government Code.<sup>3</sup> Gov't Code § 552.117(a)(2). However, section 552.117 applies only to information that a governmental body holds in an employment context. The submitted information consists of law enforcement records and, thus, we find the city does not maintain it in an employment capacity. Accordingly, the city may not withhold the information it has marked under section 552.117(a)(2) of the Government Code. Nevertheless, section 552.1175 of the Government Code may be applicable to this information.<sup>4</sup>

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. *See id.* § 552.1175. 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. *See Gov't Code* § 552.1175. The city must withhold under section 552.1175 of the Government Code the home address and telephone number it has marked if the individual at issue is a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. However, the [] may not withhold this information under section 552.1175 if the individual either is not a currently licensed peace officer or does not elect to restrict access to this information in accordance with section 552.1175(b).

In summary, the city must withhold incident report number 04-016827 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of basic information, the city may withhold the remaining information it has indicated under section 552.108(a)(2) of the Government Code. The city must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold under section

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<sup>3</sup> "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

<sup>4</sup> 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).*

552.1175 of the Government Code the home address and telephone number it has marked if the individual at issue is a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The city must 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/rm

Ref: ID# 848618

Enc. Submitted documents

c: Requestor