



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 2020

Mr. Thomas L. McMillian
Assistant City Attorney
City of Amarillo
200 Southeast Third Avenue, 4th Floor
Amarillo, Texas 79101-1514

OR2020-27496

Dear Mr. McMillian:

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# 851943 (ORR# 20-2306).

The Amarillo Police Department (the "department") received a request for information pertaining to a named individual. 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:

...

(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). 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 report number 2009-0075440 involves juvenile offenders, so as to fall within the scope of section 58.008(b). However, the requestor is a representative of one of the juvenile offenders at issue, who is now an adult, and has access to the information pursuant to section 58.008(d). *See id.* § 58.008(d). Therefore, the department may not withhold this 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 concerning the other juvenile offender in this 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, 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 the *Industrial Foundation* decision. *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.). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entirety of the requested information must be withheld to protect the individual's privacy.

The requestor has a right of access to the private information of the named individual 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). Nevertheless, withholding only the identities of the other individuals whose information is at issue in report number 2009-0079811 would not preserve the common-law right of privacy of those individuals. Accordingly, to protect the privacy of those individuals, the city must withhold report number 2009-0079811 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the dates of birth of the witnesses at issue in report number 2009-0075440 on that ground.

In summary, the city must (1) withhold report number 2009-0079811 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the personally identifiable information concerning the juvenile offender who is not the named individual in report number 2009-0075440 under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code; (3) withhold the dates of birth of the witnesses at issue in report number 2009-0075440 under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) release the remaining information.¹

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.

¹ Because the requestor has a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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# 851943

Enc. Submitted documents

c: Requestor
(w/o enclosures)