



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 15, 2020

Ms. Linda Pemberton  
Paralegal  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540

OR2020-31342

Dear Ms. Pemberton:

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# 858185 (ID# W033564).

The City of Killeen (the "city") received a request for all police records from a specified time period, associated with a specified address. The city states some of the requested information has been released. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims 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:

- (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.<sup>1</sup> *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). The city argues report numbers K18064949, K19125928, 18-012916, and 18-013248 are excepted from disclosure under section 58.008 of the Family Code. Upon review, we find report number K18064949 involves a juvenile offender, so as to fall within the scope of section 58.008(b). Although the requestor is a parent of the juvenile offender at issue, the juvenile offender is now an adult. Accordingly, the requestor does not have a right of access to the juvenile offender’s record under section 58.008(d) of the Family Code. *See id.* § 58.008(d). Therefore, the city must withhold report number K18064949 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>2</sup> However, we find report numbers K19125928, 18-012916, and 18-013248 do not involve a juvenile offender, so as to fall within the scope of section 58.008(b). Therefore, the city may not withhold report numbers K19125928, 18-012916, and 18-013248 under section 552.101 of the Government Code in conjunction with 58.008(b) of the Family Code.

Section 552.101 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

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<sup>1</sup> Although the city raises section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 21. Thus, we understand the city to raise section 58.008(b) of the Family Code.

<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

(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). Upon review, we find some of the remaining information was used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *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). Accordingly, we find report numbers K17151935, K17151944, K17151945, 19-008398, and 19-008399 are subject to chapter 261 of the Family Code. We note the juvenile at issue in report numbers K17151935, K17151944, and K17151945 is now eighteen years or older. Accordingly, the city must withhold report numbers K17151935, K17151944, and K17151945 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>3</sup> However, the requestor is a parent of the child victim in report numbers 19-008398 and 19-008399, and is not alleged to have committed the suspected abuse or neglect in these reports. Thus, the city may not withhold report numbers

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

19-008398 and 19-008399 from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) provides any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will determine whether report numbers 19-008398 and 19-008399 are otherwise excepted from release under the Act.

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 *Industrial Foundation*. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the requestor knows both the identity of the individual involved and the nature of the incidents in report numbers 18-005329 and 19-006262. Therefore, withholding only the individual's identity or certain details of the incidents from the requestor would not preserve the subject individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom this information relates, the city must withhold report numbers 18-005329 and 19-006262 in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>4</sup> However, we find the city failed to demonstrate the remaining information pertains to situations in which the entirety of the information must be withheld under common-law privacy. Thus, no portion of the remaining information may be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The city states report number 20-007152 pertains to a pending criminal prosecution, and release of that information would interfere with the prosecution of the case. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to report number 20-007152.

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The city states report numbers K19121866, 18-012916, 18-013248, and K19125928 relate to concluded criminal investigations that did not result in convictions or deferred adjudications. Based upon the city's representations and our review, we find section 552.108(a)(2) is applicable to report numbers K19121866, 18-012916, 18-013248, and K19125928.

However, 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense. *See* ORD 127 at 4. Accordingly, with the exception of basic information, the city may withhold report number 20-007152 under section 552.108(a)(1) and report numbers K19121866, 18-012916, 18-013248, and K19125928 under section 552.108(a)(2) of the Government Code.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy which protects information that is subject to the two part test discussed above. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 45 (1987). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). Upon review, we find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the city has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold report number K18064949 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The city must withhold report numbers K17151935, K17151944, and K17151945 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold report numbers 18-005329 and 19-006262 in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold report number 20-007152 under section 552.108(a)(1) of the Government Code and report numbers K19121866,

18-012916, 18-013248, and K19125928 under section 552.108(a)(2) of the Government Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,

Chase D. Young  
Attorney  
Open Records Division

CDY/jm

Ref: ID# 858185

Enc. Submitted documents

c: Requestor  
(w/o enclosures)