



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 8, 2022

Ms. Alicia K. Kreh  
Counsel for Town of Flower Mound  
Taylor Olson Adkins Sralla Ellam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2022-03365

Dear Ms. Kreh:

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# 934780.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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:

(b) Except as provided by Subsection (d), 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. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22, 2017 Tex. Sess. Law Serv. 3173, 3187. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find the submitted information involves juvenile offenders, so as to fall within the scope of section 58.008(b).

In this instance, however, the requestor is a representative of Federal Bureau of Investigation and indicates he is conducting an investigation regarding the named individual. We note the requestor has provided a signed release form from the individual named in his request, who is a juvenile offender in the information at issue. As such, the requestor has a right of access to juvenile law enforcement records concerning this juvenile pursuant to section 58.008(d)(3) of the Family Code. *See id.* § 58.008(d)(3). However, section 58.008(e)(1) provides any personally identifiable information about a juvenile

suspect, offender, victim, or witness who is not the named individual must be redacted. *See id.* § 58.008(e)(1). Accordingly, the town must withhold the information we marked in the information at issue under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. Further, section 58.008(e)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. Accordingly, we will address the applicability of other exceptions to disclosure for the remaining reports.

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 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.). We note the requestor has a right of access to the named individual's date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the town may not withhold the date of birth belonging to the named individual under section 552.101 on the basis of common-law privacy. Accordingly, with the exception of the date of birth belonging to the named individual, the town must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the town must withhold the information we marked in the information at issue under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. With the exception of the date of birth belonging to the named individual, the town must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The town must release the remaining information to this requestor.<sup>1</sup>

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->

---

<sup>1</sup> We note the information being released in this instance includes information that is confidential with respect to the general public. *See* Gov't Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the town receives another request for this information from a different requestor, then the town should again seek a ruling from this office.

[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,

Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/mo

Ref: ID# 934780

Enc. Submitted documents

c: Requestor  
(w/o enclosures)