



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 25, 2022

Ms. Mary E. Miller
Assistant District Attorney
Denton County Sheriff's Office
127 North Woodrow Lane, Suite 300
Denton, Texas 76205

OR2022-08765

Dear Ms. Miller:

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# 938869 (ORR# 6547).

The Denton County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the requestor. The sheriff's office claims some of the submitted information is excepted from disclosure under sections 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(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. *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). We find event report number 14-04139830 involves a juvenile offender, so as to fall within the scope of section 58.008(b). The exceptions in section 58.008 do not appear to apply. Therefore, the sheriff’s office must withhold report number 14-04139830 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.¹

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides as follows:

[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 this chapter and the identity of the person making the report; and
- (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 this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). Upon review, we find event report number 20-0025637 was used or developed in an investigation by the city’s police department (the “department”) under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Thus, the information is within the scope of section 261.201 of the Family Code. The city does not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the city must withhold event report number 20-0025637 under section 552.101 of the Government

¹ As our ruling is dispositive, we do not address the arguments of the sheriff’s office to withhold this information.

Code in conjunction with section 261.201(a) of the Family Code.² See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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 sheriff's office must withhold the dates of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the informer's privilege, which has long been recognized by Texas courts. *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. See Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). The sheriff's office indicates the remaining information it has marked under the informer's privilege identifies complainants who reported possible criminal activities to a law enforcement agency. Upon review, we conclude the sheriff's office may withhold the remaining information it has marked under section 552.101 of the Government Code in conjunction with the informer's privilege.³

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. See Gov't Code § 552.130. The sheriff's office must withhold the motor vehicle record information it has marked, as well as the information we have marked, under section 552.130 of the Government Code.

² As our ruling is dispositive, we do not address the arguments of the sheriff's office to withhold this information.

³ As our ruling is dispositive, we do not address the other argument of the sheriff's office to withhold this information.

In summary, the sheriff's office must withhold the following: (1) report number 14-04139830 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code; (2) event report number 20-0025637 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (3) the dates of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the information marked under section 552.130 of the Government Code. The sheriff's office may withhold the remaining information it has marked under section 552.101 of the Government Code in conjunction with the informer's privilege. The sheriff's office 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/be

Ref: ID# 938869

Enc. Submitted documents

c: Requestor
(w/o enclosures)