



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 5, 2022

Ms. Charla Thomas
Deputy City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2022-09994

Dear Ms. Thomas:

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# 939764 (Ref. No. 22-78).

The City of Temple (the "city") received a request for information related to nine specified report numbers. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the city did not submit one of the requested reports. To the extent any such information existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses section 58.008 of the Family Code, which provides, in part:

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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.

Fam. Code § 58.008(b); *see also id.* § 51.03(a) (defining “delinquent conduct” 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 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). The information we indicated involves juvenile offenders, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Accordingly, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.²

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

² As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

Id. § 261.201(a). The information we indicated was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the city. *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 this information is subject to chapter 261 of the Family Code. The city does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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 the remaining information pertains to active criminal investigations or prosecution. However, we note call for service P18008816 and report 18000812 pertain to allegations of assault. The statute of limitations for this offense is two years from the date of the underlying offense. *See* Penal Code § 22.01; Crim. Proc. Code art. 12.02 (indictment for misdemeanor may be presented within two years, but not afterward). You do not inform us criminal charges were filed within the limitation period for this incident. Thus, we find you have failed to demonstrate release call for service P18008816 and report 18000812 would interfere with the detection, investigation, or prosecution of crime and we determine the city may not withhold this information under section 552.108(a)(1). Based on your representation, and our review, we conclude the release of the remaining 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 the remaining information at issue.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 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). Thus, with the exception of the basic information, call for service P18008816, and report 18000812, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

³ As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

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.). However, we note the requestor has a right of access to her own date of birth and the dates of birth of her minor children; thus, this information may not be withheld from her under section 552.101 in conjunction with common-law privacy. *See Gov't Code* § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to 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 individual requests information concerning herself). Therefore, with the exception of the dates of birth of the requestor and her minor children, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.⁴ *See Gov't Code* § 552.130. We note section 552.130 protects personal privacy. Thus, the requestor has a right of access to her motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a). Accordingly, with the exception of the information pertaining to the requestor, the city must withhold all motor vehicle information within the remaining information under section 552.130 of the Government Code.

In summary, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, call for service P18008816, and report 18000812, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. With the exception of the dates of birth of the requestor and her minor children, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information pertaining to the requestor, the city must withhold all motor vehicle information within the remaining information under section 552.130 of the Government Code. The city must release the remaining information.⁵

⁴ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵ We note the requestor has a special right of access to some of the basic information being released. *See* Fam. Code §§ 58.008(d), 261.201(k); Gov't Code § 552.023; ORD 481 at 4. Accordingly, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from

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
Assistant Attorney General
Open Records Division

CDY/jxd

Ref: ID# 939764

Enc. Submitted documents

c: Requestor
(w/o enclosures)

this office. We also note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). Therefore, the city may withhold the social security numbers of living individuals within the remaining information under section 552.147 of the Government Code. However, the requestor has a right of access the social security numbers of her minor children. *See generally id.* § 552.023(b).