



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 22, 2022

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

OR2022-11633

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# 943360 (ID# W038188).

The City of Killeen (the "city") received a request for reports pertaining to named individuals and specified locations. You state you released some information. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 (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). Upon review, we find report K20037498 involves a juvenile offender, 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 report number K20037498 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

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 numbers 20-005699 and 20-010467 pertain to active criminal investigations or prosecutions. Based on this representation, we conclude the release of this information 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 numbers 20-005699 and 20-010467.

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 17-017700, 12-003884, 17-013029, and 21-001119 pertain to closed criminal cases that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to report numbers 17-017700, 12-003884, 17-013029, and 21-01119.

However, we note 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). Thus, with the exception of the basic information, which you state you will release, the city may withhold report numbers 20-005699 and 20-010467 under section 552.108(a)(1) of the Government Code and may withhold report numbers 17-017700, 12-003884, 17-013029, and 21-001119 under section 552.108(a)(2) of the Government Code.

Section 552.101 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). The 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.). Upon review, we agree some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, 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 you failed to demonstrate the remaining information you marked is highly intimate or embarrassing and not of legitimate public interest. Thus, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold report number K20037498 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of the basic information, which you state you will release, the city may withhold report numbers 20-005699 and 20-010467 under section 552.108(a)(1) of the Government Code and may withhold report numbers 17-017700, 12-003884, 17-013029, and 21-001119 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 remaining information must be released.

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,

Melanie Villars  
Assistant Attorney General  
Open Records Division

MJV/jxd

Ref: ID# 943360

Enc. Submitted documents

c: Requestor  
(w/o enclosures)