



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 10, 2022

Ms. Janese Dudash
Assistant City Attorney
The City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-13396

Dear Ms. Dudash:

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# 942355 (E001325-020122).

The City of Fort Worth (the "city") received a request for five points of information related to a specified address. You state the city will release some information. You claim some of the submitted information is 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). The information you 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 you indicated 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 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.

Id. § 261.201(a). Upon review, we find the information you indicated was used or developed in investigations of alleged or suspected child abuse or neglect conducted by the city’s police department. *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

¹ As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

city must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² 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). You state some of the remaining information pertains to active criminal investigations or prosecutions. However, we note incident report numbers 170017503, 170030899, 170031618, 170032591, 170055063, and 170091421, as well as related incident detail report numbers 170277405, 170283717, 170494324, and 170817251 pertain to allegations of criminal mischief, theft, burglary of a vehicle, or assault. The statutes of limitations for these offenses are two or three years from the dates of the underlying offenses. See Penal Code §§ 28.03(f) (criminal mischief), 30.05 (criminal trespass is misdemeanor); Crim. Proc. Code arts. 12.01(7) (providing an indictment or information on felony not listed in articles 12.01(1)-(6) may be presented within three years from the date of the commission of the offense, and not afterward), 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 periods for these cases. Thus, we find you have failed to demonstrate release of incident report numbers 170017503, 170030899, 170031618, 170032591, 170055063, and 170091421, as well as related incident detail report numbers 170277405, 170283717, 170494324, and 170817251 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 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, incident report numbers 170017503, 170030899, 170031618, 170032591, 170055063, and 170091421, as well as related incident detail report numbers 170277405, 170283717, 170494324, and 170817251,

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

the city may withhold the information you indicated under section 552.108(a)(1) of the Government Code.³

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 the *Industrial Foundation* decision. *Id.* at 683. This office has found information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). 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.). This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the remaining information, including some basic information, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. However, we find the some of the information at issue, including dates of birth, pertain to an individuals who have been de-identified; thus, their privacy interests are protected. Accordingly, the city may not withhold the dates of birth and information pertaining to de-identified individuals under section 552.101 on this basis. Thus, the city must withhold all identifiable public citizens' dates of birth and the information we marked and indicated, including within basic information, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information you marked and indicated is highly intimate or embarrassing and not of legitimate public concern, or it pertains to individuals who are de-identified. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

You raise section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code for the remaining information you marked. Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government

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

Code. *See* Gov't Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. We note Federal Bureau of Investigation ("FBI") numbers constitute CHRI generated by the FBI. Thus, the city must withhold all FBI numbers in the remaining information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. However, we find you have not demonstrated the remaining information you marked consists of CHRI for purposes of chapter 411 of the Government Code, and the city may not withhold the remaining information at issue under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses article 62.005(b) of the Code of Criminal Procedure. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information for the DPS sex offender registration database: the person's full name; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; each alias; home, work, or cellular telephone number; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; the identification of any online identifier established or used by the person; and any other information required by the city. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number; driver's license number; home, work, or cellular telephone number; the identification of any online identifier established or used by the person; all information required by the DPS outside of the enumerated categories of information including any information regarding an employer's name, address, or telephone number; and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Thus, the city must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b) of the Code of Criminal Procedure.

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.⁴ *See* Gov't Code § 552.130. Accordingly, the city must withhold all drivers' license numbers, license plate numbers, vehicle identification numbers, and states of issuance, as well as the information we marked and indicated, in the remaining information under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a government body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the city must withhold the insurance policy number we marked under section 552.136 of the Government Code.

In summary, the city must withhold the information you 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 you 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, incident report numbers 170017503, 170030899, 170031618, 170032591, 170055063, and 170091421, as well as related incident detail report numbers 170277405, 170283717, 170494324, and 170817251, the city may withhold the information you indicated under section 552.108(a)(1) of the Government Code. The city must withhold all identifiable public citizens' dates of birth and the information we marked and indicated, including within basic information, under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold all FBI numbers in the remaining information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The city must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b) of the Code of Criminal Procedure. The city must withhold the drivers' license numbers, license plate numbers, vehicle identification numbers, and states of issuance, as well as the information we marked and indicated, in the remaining information under section 552.130 of the Government Code. The city must withhold the insurance policy number we marked under section 552.136 of the Government Code. The city must release the remaining information.⁵

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

⁴ The Office of the Attorney General will raise mandatory exceptions 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 remaining information contains social security numbers. 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. *See* Gov't Code § 552.147(b).

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/jm

Ref: ID# 942355

Enc. Submitted documents

c: Requestor
(w/o enclosures)