



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2022

Mr. Bill Gibbens
Administrative Director
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691

OR2022-18302

Dear Mr. Gibbens:

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# 955604 (ORR #W013719-041222).

The Pflugerville Police Department (the "department") received a request for all police reports for a specified address during a defined period of time. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it is outside of the period of time defined in the request. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

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 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:

...

(4) the child's parent or guardian.

(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:

...

(2) any information that is excepted from required disclosure under [the Act] or any other law.

Fam. Code § 58.008(b), (d)(4), (e)(2); *see 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. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find some of the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply for the information we marked; therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.¹ However, the requestor is the parent of the juvenile offender in the remaining information subject to section 58.008. As such, the requestor has

¹ As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

a right to inspect juvenile law enforcement records concerning this juvenile pursuant to section 58.008(d) of the Family Code. *See id.* § 58.008(d). 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. *See id.* § 58.008(e)(2). Thus, we will consider your remaining arguments with respect to the remaining information subject to section 58.008. Further, we find you have not demonstrated any of the remaining information identifies a juvenile suspect or offender for purposes of section 58.008(b). Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

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 highly intimate or 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. *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 special right of access to otherwise private information concerning himself and his juvenile children pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold all public citizens' dates of birth that do not belong to the requestor or his minor children under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

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(a). We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own 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); ORD 481 at 4. Therefore, the department must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The department must withhold all public citizens' dates of birth that do not belong to the requestor or his minor children under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code. The department must release the remaining responsive information.²

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,

Nick Ybarra
Assistant Attorney General
Open Records Division

NY/jm

Ref: ID# 955604

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note the requestor has a special right of access to some of the information being released in this instance. See Fam. Code §§ 58.008(d); 261.201(k); Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.