



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2022

Mr. Tillman S. Roots
Assistant District Attorney
Comal County Criminal District Attorney's Office
199 Main Plaza, Suite 2007
New Braunfels, Texas 78130-5161

OR2022-18519

Dear Mr. Roots:

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# 955556 (ORR# 22OR-057).

The Comal County Sheriff's Office (the "sheriff's office") received a request for three specified incident reports. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions 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 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entirety of the requested information must be withheld to protect the individual's privacy. Withholding only the identity of the individual whose information is at issue or certain details of incident report number 22-03-5168 from this requestor would not preserve the common-law right of privacy of the individual at issue. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff's office must withhold incident report number 22-03-5168 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹

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

Section 552.101 of the Government Code also 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* Fam. Code § 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). The sheriff’s office asserts the submitted information involves delinquent conduct or conduct indicating a need for supervision. However, we are unable to determine the age of the offenders at issue. Accordingly, we must rule conditionally. If the offenders at issue in the remaining reports were ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the sheriff’s office must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the offenders were not ten years of age or older and under seventeen years of age at the time of the conduct, then the sheriff’s office may not withhold the information at issue under section 552.101 on that basis.

As discussed above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. 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 requestor has a right of access to her own date of birth pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the 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 individuals request information concerning themselves). Nevertheless, the sheriff’s office must withhold the submitted dates of birth that do not pertain to the requestor under

section 552.101 of the Government Code in conjunction with common-law privacy. We also find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the sheriff's office must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff's office must withhold incident report number 22-03-5168 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the offenders at issue in the remaining reports were ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the sheriff's office must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the offenders were not ten years of age or older and under seventeen years of age at the time of the conduct, then the sheriff's office must withhold the submitted dates of birth that do not pertain to the requestor and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, but 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/eb

Ref: ID# 955556

Enc. Submitted documents

c: Requestor
(w/o enclosures)