



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2022

Mr. Adan Anderson
Assistant County Attorney
Montgomery County
501 North Thompson, Suite #300
Conroe, Texas 77301

OR2022-22882

Dear Mr. Anderson:

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# 963705 (ORR# 22PIA239).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to a specified automobile accident involving the requestor's client. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We note section 58.008(b) applies only to law enforcement records that involve a juvenile as a suspect, offender, or defendant. Section 58.008(b) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party. Further, section 58.008 does not make information related to traffic offense confidential. *See id.* §§ 51.02(16) (defining traffic offense), .03(a) (delinquent conduct for purposes of title 3 of Family Code does not include traffic offenses), .03(b) (conduct indicating a need for supervision does not include traffic offense). The sheriff’s office argues the submitted information falls within the scope of section 58.008(b) of the Family Code. However, upon review, we find the sheriff’s office has not demonstrated the submitted information involves juvenile conduct for purposes of section 58.008(b) of the Family Code. Accordingly, the sheriff’s office may not withhold any portion of the submitted information under section 552.101 of the Government Code on that basis.

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 *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under 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.). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestor has a right of access to his client’s confidential information pursuant to section 552.023 of the Government Code. *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 himself). Therefore, to the extent the information at issue does not pertain to the requestor's client, the sheriff's office must withhold all public citizens' dates of birth and the information we have indicated under section 552.101 of the Government Code 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.¹ See Gov't Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. See *id.* § 552.023(a); ORD 481 at 4. Accordingly, the sheriff's office must withhold all visible motor vehicle record information not belonging to the requestor's client in the remaining information and the information we have marked under section 552.130 of the Government Code.

Section 552.136 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 governmental body is confidential." Gov't Code § 552.136(b); see *id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. See Open Records Decision No. 684 at 9 (2009). We note the purpose of section 552.136 is to protect privacy. Accordingly, the requestor has a right of access to access device numbers belonging to his client under section 552.023 of the Government Code and it may not be withheld from him under section 552.136. See Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, to the extent the submitted insurance policy numbers do not belong to the requestor's client, the sheriff's office must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code.

In summary, to the extent the information at issue does not pertain to the requestor's client, the sheriff's office must withhold all public citizens' dates of birth and the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold all visible motor vehicle record information not belonging to the requestor's client in the remaining information and the information we have marked under section 552.130 of the Government Code. To the extent the submitted insurance policy numbers do not belong to the requestor's client, the sheriff's office must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. The sheriff's office must release the remaining information.²

¹ 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, 480 (1987), 470 (1987).

² We note the requestor has a right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the sheriff's office receives another request for the same information from a different requestor, the sheriff's office must again seek a decision from this office.

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,

Colin Henry
Attorney
Open Records Division

CEH/jxd

Ref: ID# 963705

Enc. Submitted documents

c: Requestor
(w/o enclosures)