



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 19, 2022

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1400 Botham Jean Boulevard
Dallas, Texas 75215

OR2022-28760

Dear Ms. Silver:

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# 972531 (ORR# D012956-050622).

The Dallas Police Department (the “department”) received a request for a specified incident report. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹ We note you did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov’t Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider the applicability of this exception to the submitted information. *See id.* §§ 552.007, .302, .352.

² We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section 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 (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 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). We note section 58.008(b) does not apply to law enforcement records that relate to a juvenile involved only as a complainant, victim, witness, or other involved party; rather, the juvenile must be involved as a suspect, offender, or defendant. Upon review, find the submitted information involves delinquent conduct or conduct indicating a need for supervision. However, we are unable to determine the age of the offender involved in the information at issue. Accordingly, we must rule in the alternative. To the extent the submitted information involves an offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, as it does not appear any of the exceptions in section 58.008 apply, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, to the extent the submitted information does not involve an offender was under ten years of age or was seventeen years of age or older at

the time of the conduct, the information does not involve juvenile conduct for purposes of section 58.008(b) of the Family Code, and the department may not withhold the information at issue 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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 right of access to her own private information and information pertaining to her minor child pursuant to section 552.023 of the Government Code and this information may not be withheld from her under common-law privacy. *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 individual requests information concerning himself). Thus, the department must withhold the dates of birth not belonging to the requestor or her minor child under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the submitted information involves an offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the department must withhold the submitted information at issue under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. To the extent the submitted information does not involve an offender was under ten years of age or was seventeen years of age or older at the time of the conduct, the department must withhold the dates of birth not belonging to the requestor or her minor child under section 552.101 of the Government Code in conjunction with common-law privacy and must release the remaining information to this requestor.³

³ We note the requestor has a special right of access to some of the information being released in this instance. *See Gov't Code* §§ 552.023(a), .137(b); ORD 481 at 4. Thus, if the department receives another request for this information from an individual without such a right of access, we note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 553.130(e). *See id.* § 552.130(d), (e). Additionally, Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684. Further, we note Open Records Letter No. 2017-09757 (2017) is a previous determination issued to the City of Dallas authorizing it to withhold

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 972531

Enc. Submitted documents

c: Requestor
(w/o enclosures)

certain public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.