



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 19, 2022

Ms. Aliceson Cotton  
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1700 Redbud Boulevard, Suite 300  
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OR2022-32277

Dear Ms. Cotton:

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# 979357.

The City of Wylie (the "city"), which you represent, received five requests from the same requestor for all police reports generated on specified dates. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information made confidential by other statutes, such as section 58.008(b) of the Family Code, which provides:

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), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) applies 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). You generally assert the submitted information is subject to section 58.008(b) of the 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, we find some of the submitted information, which we have marked 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. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>1</sup> However, we find the remaining information at issue does not involve a juvenile suspect, offender, or defendant engaging in delinquent conduct or conduct indicating a need for supervision for the purposes of section 58.008. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code on the basis of section 58.008(b) of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides:

[T]he following information is confidential, is not subject to public release under [the Act], 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.

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Fam. Code § 261.201(a). You generally assert the remaining information is made confidential by section 261.201(a) of the Family Code. Upon review, we find some of the remaining information, which we have marked, was used or developed in an investigation of alleged or suspected child abuse or neglect. *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). As you do not indicate the city has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>2</sup> *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* However, we conclude you have failed to establish any portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Therefore, the remaining information is not confidential under section 261.201 of the Family Code, and the city may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.108 of the Government Code provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). A governmental body raising section 552.108 must explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). A governmental body claiming section 552.108(a)(1) or section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2), (b)(2).

You claim section 552.108(a)(1) for the remaining information and state the information at issue “relates to ongoing detection and investigation of crime.” However, you also claim section 552.108(a)(2) for the information at issue and state such information “relates to . . . internal law enforcement records used in the detection and investigation of one or more crimes which did not result in a conviction or deferred adjudication[.]” In light of these representations, we are unable to determine whether the information at issue relates to ongoing criminal cases or to closed cases that did not result in convictions or deferred adjudications. Additionally, we find you have failed to establish these arguments are complementary as contemplated by the court of appeals in *City of Carrollton v. Paxton*, 490 S.W.3d 187, 196 (Tex. App.—Austin 2016, pet. denied). Thus, we find the city has failed to demonstrate the applicability of section 552.108(a)(1) or section 552.108(a)(2) to the information at issue. Accordingly, the city may not withhold any portion of the remaining information under section 552.108 of the Government 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 intimate and 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). Further, 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.). However, we note the public has a legitimate interest in the details of a crime. *See Open Records Decision No. 400* at 4 (1983). *See generally Lowe v. Hearst Commc'ns, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (5th Cir. 1994))).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note one of the dates of birth within the remaining information belongs to an individual who will be de-identified by our markings and whose privacy interests are, thus, protected. Accordingly, with the

exception of the de-identified individual's date of birth, the city must withhold the dates of birth within the remaining information and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup> However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, none of the remaining information consists of motor vehicle record information subject to section 552.130, and no portion of it may be withheld on that basis.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.<sup>4</sup> *Id.* § 552.1175. Section 552.1175 applies, in part, to "current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1); *see id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). The remaining information contains information that may be subject to section 552.1175. Accordingly, to the extent the information we have marked relates to a current or honorably retired peace officer who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the city must withhold it under section 552.1175 of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service.

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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The

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<sup>3</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>4</sup> 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).

city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the de-identified individual's date of birth, the city must withhold the dates of birth within the remaining information and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. To the extent the information we have marked relates to a current or honorably retired peace officer who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the city must withhold it under section 552.1175 of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. The city must withhold the information we have marked under section 552.136 of the Government Code. The city 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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/pt

Ref: ID# 979357

Enc. Submitted documents

c: Requestor  
(w/o enclosures)