



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2014

Ms. Evelyn W. Kimeu
Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2014-18796

Dear Ms. Kimeu:

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# 540141 (ORU No. 14-4999).

The Houston Police Department (the "department") received a request for the Uniform Crime Reporting data from 2007 to 2014. You claim some of 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 representative sample of information.¹ We have received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested 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 protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Fam. Code § 58.007(c). The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from 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 Subchapters B, D, and E.

Id. § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). We note portions of the submitted information involve allegations of juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). Therefore, 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 reported conduct, the information relating to that incident is confidential under section 58.007(c) and must be withheld under section 552.101 of the Government Code. However, to the extent the offenders in the submitted information were not ten years of age or older and under seventeen years of age at the time of the reported conduct, the information relating to those incidents is not confidential under section 58.007(c) and may not be withheld 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. We note, however, the dates of birth of living members of the public are not protected by common-law privacy under section 552.101. *See Open Records Decision No. 455 at 7 (1987)* (home addresses, telephone numbers, and dates of birth not

private). Upon review, we find none of the submitted information is highly intimate or embarrassing information of no legitimate public concern. Thus, this information may not be withheld 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 reported conduct, the department must withhold the information relating to those incidents under section 552.101 of the Government Code in conjunction section 58.007 of the Family Code. The department 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/dls

Ref: ID# 540141

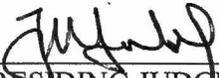
Enc. Submitted documents

c: Requestor
(w/o enclosures)

IT IS THEREFORE ORDERED AND DECLARED that:

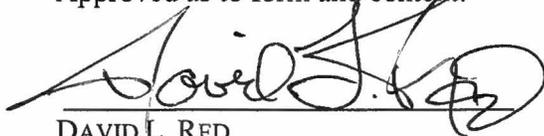
1. Pursuant to *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin, May 22, 2015, pet. denied) (mem. op.), the City of Houston must withhold the requested dates of birth of members of the public under Texas Government Code section 552.101, in conjunction with common law privacy.
2. All court cost and attorney fees are taxed against the parties incurring the same;
3. All relief not expressly granted is denied; and
4. This Order disposes of all claims between Plaintiff and Defendant as final and appealable.

Signed this the 4th day of November, 2015.



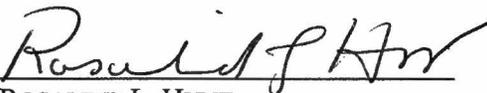
PRESIDING JUDGE
TIM SYRAK

Approved as to form and content:



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