



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 2, 2015

Ms. Julie P. Doshier
Counsel for the City of Highland Village
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

OR2015-25122

Dear Ms. Doshier:

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# 588961 (PIR Nos. 73413 and 73738).

The Highland Village Police Department (the "department"), which you represent, received three requests from different requestors for reports pertaining to a named individual. You state the department has released some information. You also state the department will withhold the marked information pursuant to sections 552.130(c) and 552.147(b) of the Government Code.¹ You claim portions of the submitted information are 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 public 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 58.007 of the Family Code, which provides in relevant part as follows:

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b).

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; [and]

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j)(1)-(2). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). Section 58.007 allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e). The submitted documents involve alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (for purposes of section 58.007(c), "child" means person ten years of age or older and under seventeen years of age when conduct occurred), .03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). Therefore, the submitted information is

generally confidential under section 58.007(c). Although the third requestor is a parent of one of the juvenile offenders listed in the submitted report, the juvenile at issue is now an adult. Accordingly, the department must withhold the submitted information in its entirety from the third requestor under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

However, we note the first and second requestors are the authorized representatives of one of the juvenile offenders, who is now an adult. Under section 58.007(e), the former juvenile may inspect law enforcement records concerning himself. *Id.* § 58.007(e). Accordingly, the first and second requestor have a right to inspect juvenile law enforcement records concerning this individual. However, section 58.007(j)(1) provides that any identifiable information about a juvenile suspect, offender, victim, or witness who is not the child at issue must be redacted. *Id.* § 58.007(j)(1). Accordingly, the department must withhold the information we have marked that identifies other juvenile suspects or offenders under section 552.101 in conjunction with section 58.007(j)(1). However, we find the remaining information you have marked does not identify other juvenile suspects, offenders, victims, or witnesses. Thus, the department may not withhold any of the remaining information under section 552.101 in conjunction with 58.007(j)(1). Further we note section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, pursuant to section 58.007(j)(2), we must consider whether the remaining information is otherwise excepted under the Act.

The department asserts the dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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 supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.² *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. You argue portions of the remaining information are subject to common-law privacy. However, upon review, most of the information you marked pertains to individuals who are no longer identified. Thus, we find this information does not implicate an individual's

²Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

privacy interests and it may not be withheld under section 552.101 in conjunction with common-law privacy. Accordingly, the department must withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the submitted information from the third requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must release the submitted information to the first and second requestors pursuant to section 58.007(e); however, in releasing the submitted information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code and common-law privacy.³

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 588961

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

³We note the information being released to the first and second requestors contains confidential information to which the requestor has a right of access. *See* Fam. Code § 58.007(e); Gov't Code § 552.023(a).