



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 29, 2016

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Austin, Texas 78745-5320

OR2016-06906

Dear Ms. Trevino:

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# 603485.

The Pflugerville Police Department (the "department"), which you represent, received a request for information pertaining to the requestor.<sup>1</sup> The department states it will withhold information pursuant to sections 552.136(c) and 552.147(b) of the Government Code.<sup>2</sup> The department claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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<sup>1</sup>The department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

<sup>2</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b).

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 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). Section 58.007 provides, in relevant part, the following:

(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 [the Act], or other law.

*Id.* § 58.007(c), (e), (j). Upon review, we find Exhibits E2, E4, E5, E6, E8, and E13 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 who is 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”). Therefore, this information is generally confidential under section 58.007(c) of the Family Code. However, the requestor, who is now an adult, is a juvenile offender at issue in Exhibits E4, E5, E6, E8, and E13. Accordingly, the department may not withhold these exhibits under section 552.101 of the Government Code on that ground. *See id.* § 58.007(e). Nevertheless, the department must withhold the personally identifiable information concerning the other juvenile offenders at issue in Exhibit E4, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. *Id.* § 58.007(j)(1). The remaining information in Exhibit E4 is not confidential under section 58.007(j)(1), and the department may not withhold it under section 552.101 on that ground. In addition, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or law must be redacted before a governmental body releases information pursuant to section 58.007(e). *Id.* § 58.007(j)(2). Thus, we will determine whether the remaining information in these exhibits is otherwise excepted from release under the Act.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part, as follows:

(a) [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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing

conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find Exhibits E2 and E5 were used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Thus, these exhibits are generally confidential under section 261.201(a). Accordingly, the department must withhold Exhibit E5 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>3</sup> However, the requestor is the child victim at issue in Exhibit E2. Therefore, the department may not withhold Exhibit E2 from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Nevertheless, section 261.201(l)(2) provides any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). As noted above, Exhibit E2 is confidential under section 58.007(c) of the Family Code. Accordingly, the department must withhold Exhibit E2 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family 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. Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The

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<sup>3</sup>As our ruling is dispositive, we do not address the other argument of the department to withhold this information.

requestor knows the identities of the victims in Exhibits E1 and E3. Thus, withholding only the identifying information of the victims from the requestor would not preserve their common-law right to privacy. Therefore, we conclude the department must withhold Exhibits E1 and E3 in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>4</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The department states Exhibits E4, E6 through E10, and E12 through E14 pertain to cases that concluded in results other than conviction or deferred adjudication. However, the department also states it “was unable to verify if the cases [in] Exhibits E4, E6, E7, E12 and E14 resulted in conviction or deferred adjudication due to the passage of time since the date of the offense.” Based on these conflicting representations, we are unable to determine if Exhibits E4, E6, E7, E12, and E14 relate to cases that concluded in results other than conviction or deferred adjudication. Thus, we conclude the department has failed to demonstrate the applicability of section 552.108(a)(2) to these exhibits, and may not withhold any of the information in these exhibits on that ground. Nevertheless, we agree section 552.108(a)(2) is applicable to Exhibits E8, E9, E10, and E13.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold Exhibits E8, E9, E10, and E13 under section 552.108(a)(2) of the Government Code.<sup>5</sup>

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

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<sup>4</sup>As our ruling is dispositive, we do not address the other argument of the department to withhold this information.

<sup>5</sup>As our ruling is dispositive, we do not address the other arguments of the department to withhold this information, except to note basic information does not include dates of birth. *See* ORD 127 at 3-4

section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>6</sup> *Tex. 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. The requestor has a right of access to his own date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). We also note some of the remaining dates of birth pertain to individuals who have been deidentified and whose privacy interests are, thus, protected. Accordingly, the department may not withhold these dates of birth under section 552.101 in conjunction with common-law privacy. Nevertheless, the department must withhold the remaining dates of birth at issue, which we have marked in the remaining information, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code may be applicable to some of the submitted information.<sup>7</sup> Section 552.1175 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. *See* Gov't Code § 552.1175. The department must withhold the information we have marked under section 552.1175 if the individual at issue is a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. However, the department may not withhold this information under section 552.1175 if the individual either is not a currently licensed peace officer or does not elect to restrict access to this information in accordance with section 552.1175(b).

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. *See* Gov't Code § 552.130. The department must withhold the motor vehicle record information you have marked in the remaining documents, as well as the information we have marked, under section 552.130 of the Government Code.

To conclude, the department must withhold the following: (1) Exhibit E2 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (2) Exhibit E5 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (3) Exhibits E1 and E3 in their

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<sup>6</sup>Section 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).

<sup>7</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

entirety under section 552.101 of the Government Code in conjunction with common-law privacy; (4) 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; (6) the information we have marked under section 552.1175 of the Government Code if the individual at issue is a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code; (7) the information we have marked under section 552.130 of the Government Code; and (8) the information we have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold Exhibits E8, E9, E10, and E13 under section 552.108(a)(2) of the Government Code. The department must release the remaining information.<sup>8</sup>

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](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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bhf

Ref: ID# 603485

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>8</sup>Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.