



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2016

Ms. Victoria D. Honey
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

Ms. Paige Mebane
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2016-10781

Dear Ms. Honey and Ms. Mebane:

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# 609693 (City Ref. Nos. W049630, W050648).

The City of Fort Worth (the "city") received two requests for records concerning a named individual and reports concerning a specified address involving named individuals. You claim 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 information.

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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. 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.

...

(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). 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). Upon review, we find portions of the submitted information, which we marked, involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). However, we find you have not demonstrated report number 16-13608 consists of law enforcement records of a child relating to delinquent conduct or conduct indicating

a need for supervision that occurred after September 1, 1997. Accordingly, report number 16-13608 is not confidential under section 58.007(c) of the Family Code and may not be withheld under section 552.101 on that basis. Thus, the information we marked is generally confidential under section 58.007(c).

Here, the requestor may be a parent or guardian of the juvenile offender listed in the information at issue. As we are unable to make this determination, we must rule in the alternative. If the requestor is not a parent or guardian of the juvenile offender at issue, then, as it does not appear any of the exceptions in section 58.007 apply, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the requestor is a parent or guardian of the juvenile offender at issue, then this requestor has a right of access to information concerning the child under section 58.007(e), and it may not be withheld from him under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *Id.* § 58.007(e). In that instance, you argue section 58.007(j) applies to portions of the information at issue. Section 58.007(j)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's child must be redacted. *See id.* § 58.007(j)(1). However, we find you failed to demonstrate any of the information at issue identifies an additional juvenile suspect, offender, victim, or witness who is not the requestor's child. Therefore, no portion of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. 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, we will address the applicability of other exceptions to disclosure to the remaining information at issue. We will also address your remaining argument against disclosure of report number 16-13608.

Section 552.101 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. 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.¹ *Texas Comptroller*, 354 S.W.3d at 347-48.

¹Section 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).

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, you seek to withhold incident report number 16-13608 in its entirety under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of report number 16-13608 must be withheld on the basis of common-law privacy. Accordingly, the city may not withhold the entirety of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. However, upon review, we find the information you marked, and the additional information we marked in the remaining information, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, as previously noted, the requestor may be the parent or guardian of the minor child whose privacy interest is at issue in a portion of the information. Further, the remaining information we marked pertains to the requestor's spouse. Thus, the requestor may have a right of access to information pertaining to his child and his spouse that would otherwise be confidential under common-law privacy. See Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). If the requestor is not a parent or guardian of the minor child whose privacy interest is at issue and is not acting as the authorized representative of his spouse, the city must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is a parent or guardian of the minor child whose privacy interest is at issue or is acting as the authorized representative of his spouse, then this requestor has a right of access to the information you marked and we marked under section 552.023, and such information may not be withheld from him under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any portion of the remaining information 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 on this basis.

In summary, if the requestor is not a parent or guardian of the juvenile offender at issue, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor is not acting as the authorized representative of his spouse, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law

privacy. If the requestor is not a parent or guardian of the minor child whose privacy interest is at issue, the city must withhold the information pertaining to the child you marked and we marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 609693

Enc. Submitted documents

c: Requestor
(w/o enclosures)