



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2011

Ms. LeAnne Lundy  
Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2011-13689

Dear Ms. Lundy:

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# 430721.

The Klein Independent School District (the "district"), which you represent, received a request for information pertaining to a specified incident. You indicate the district will redact certain social security numbers under section 552.147 of the Government Code.<sup>1</sup> We also understand the district has redacted a Texas driver's license number under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim the requested information is excepted from disclosure under

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<sup>1</sup>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* Gov't Code § 552.147.

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 22 (to be codified at 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* Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercedes Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

sections 552.101, 552.102, and 552.108 of the Government Code. We have considered the exceptions 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, which provides in pertinent part 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 [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(1)-(2). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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. *See id.* § 51.02(2). Upon review, we agree the submitted district police department offense report is a law enforcement record involving juvenile delinquent conduct that occurred after September 1, 1997. Accordingly, the submitted information is subject to section 58.007(c).

However, in this instance, the requestor is one of the juvenile suspects listed in the submitted offense report. Section 58.007(e) allows the requestor access to his own juvenile law enforcement records. *Id.* § 58.007(e). Section 58.007(j)(1), however, provides that any personally identifiable information about a juvenile who is not the requestor must be redacted. *See id.* § 58.007(j)(1). Thus, the district must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.<sup>3</sup> Furthermore, section 58.007(j)(2) provides that 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 consider the district’s remaining arguments.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

You state the submitted offense report pertains to a criminal investigation that “was nonsuited and resulted in probation for the requestor.” We note a criminal defendant may be placed on community supervision where 1) criminal proceedings are deferred without an adjudication of guilt or 2) the defendant has been convicted and the resulting sentence is suspended in whole or in part. *See Code Crim. Proc. art. 42.12, § 2(2)* (defining “community supervision”). Accordingly, because you inform our office that the criminal investigation concluded in deferred adjudication, we cannot reconcile this apparent conflict with your section 552.108(a)(2) claim. Thus, we conclude the district has failed to demonstrate the applicability of section 552.108(a)(2) to the submitted information. Therefore, the district may not withhold the submitted information under section 552.108 of the Government Code.

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

Next, you assert certain information pertaining to students in the submitted offense report is excepted from disclosure under common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is 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 established. *Id.* at 681–82. We note the names, addresses, telephone numbers, and dates of birth of members of the public are not excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 551 at 3 (1990) (disclosure of person’s name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). Upon review, we find the information you seek to withhold is not highly intimate or embarrassing and of no legitimate concern to the public; therefore, the district may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

You raise section 552.102 of the Government Code in conjunction with the ruling in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010), for the birth date of a district employee in the submitted offense report. 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). In *Texas Comptroller*, the Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller*, 2010 WL 4910163, at \*10. Thus, *Texas Comptroller* applies to only a public employee’s birth date maintained by the employer in an employment context. In this instance, the submitted information consists of a law enforcement record. Thus, the district is not holding the submitted information in an employment context. Therefore, we conclude the district may not withhold any of the remaining information under section 552.102(a) of the Government Code.

In summary, the district 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. The remaining information must be released to this requestor.<sup>4</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.

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<sup>4</sup>As previously noted, the requestor in this instance has a special right of access under section 58.007(e) of the Family Code to the information being released. Accordingly, if the district receives another request for this information from a different requestor, the district must again request an opinion from this office.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'T Wilcox', is written over a faint, light-colored signature line.

Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 430721

Enc. Submitted documents

c: Requestor  
(w/o enclosures)