



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 3, 2014

Mr. Richard Bilbie  
Interim City Attorney  
City of Harlingen  
P.O. Box 2207  
Harlingen, Texas 78551

OR2014-09457

Dear Mr. Bilbie:

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# 524557.

The City of Harlingen (the "city") received a request for records pertaining to the birth of a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.115, and 552.148 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.115 provides, in pertinent part,

(a) A birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from [required disclosure], except that:

(1) a birth record is public information and available to the public on and after the 75th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official[.]

Gov't Code § 552.115(a)(1). You have submitted the named individual's birth certificate as responsive to the present request. The submitted information indicates that this birth

certificate is maintained by the city's Bureau of Vital Statistics, which is the local registration official. Further, the 75<sup>th</sup> anniversary of the date of birth has not yet occurred. Accordingly, the city must withhold the submitted birth certificate under section 552.115 of the Government Code.<sup>1</sup> However, you have not demonstrated how any of the remaining information is made confidential by section 552.115 of the Government Code and the city may not withhold any of the remaining information on that basis.

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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which 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.

Fam. Code § 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 section 58.007(c) applies only to law enforcement records that involve a juvenile as a suspect, offender, or defendant. You argue the remaining information is subject to section 58.007(c) of the Family Code. Upon review, we find the remaining information does not consist of law enforcement records that list a juvenile as a suspect, offender, or defendant. Thus, you have not demonstrated the applicability of section 58.007 of the Family Code to the remaining information. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

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. Upon review, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.148 of the Government Code provides the following:

- (a) In this section, "minor" means a person younger than 18 years of age.
- (b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from [required disclosure]:
  - (1) the name, age, home address, home telephone number, or social security number of the minor;
  - (2) a photograph of the minor; and
  - (3) the name of the minor's parent or legal guardian.

*Id.* § 552.148. Section 552.148 specifically applies to information maintained by a municipality "for purposes related to the participation by a minor in a recreational program or activity[.]" *Id.* § 552.148(b). Because the remaining information is not related to participation in a recreational program or activity, section 552.148 of the Government Code does not apply, and the city may not withhold any information on this basis.

In summary, the city must withhold the submitted birth certificate under section 552.115 of the Government Code. The city must release the remaining information.<sup>2</sup>

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<sup>2</sup>We note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 524557

Enc. Submitted documents

c: Requestor  
(w/o enclosures)