



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 7, 2016

Mr. M. Matthew Ribitzki  
Deputy City Attorney  
City of Burleson  
141 West Renfro  
Burleson, Texas 76028

OR2016-05217

Dear Mr. Ribitzki:

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# 604686.

The Burleson Police Department (the "department") received a request for a specified police report. 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. Section 261.201 of the Family Code 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). The submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. However, we note the requestor is a parent of the child victim listed in the information, and is not alleged to have committed the abuse. Thus, pursuant to section 261.201(k), the information at issue may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) states 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).

Accordingly, we will consider whether the information is otherwise excepted from disclosure under the Act.

Section 552.101 also 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. Section 58.007(c) provides, in relevant part:

(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:

...

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

Fam. Code § 58.007(c), (e), (j)(2). The submitted information consists of law enforcement records of a juvenile engaged in delinquent conduct that occurred on or after September 1, 1997. *See id.* §§ 51.02(2) (defining “child” as person who is ten years of age or older and under seventeen years of age at time of conduct at issue), .03(a) (defining “delinquent conduct” for purposes of section 58.007 of the Family Code). Thus, this information is subject to section 58.007. However, the documents reveal the requestor is the foster parent of the juvenile offender listed in the information at issue. Section 58.007(e) allows a child’s parent or guardian access to the child’s law enforcement records. *See id.* § 58.007(e). Section 51.02(4) of the Family Code defines a guardian as “the person, who, under court order, is the guardian of the person of the child or public or private agency with whom the child has been placed by the court.” *Id.* § 51.02(4). We understand foster children are generally under the conservatorship of the Texas Department of Family and Protective Services (“DFPS”), and the courts may order certain parties, such as foster parents, to provide certain care and to have certain responsibilities. *See, e.g., id.* §§ 161.207-.208, 263.001, 264.122, 266.001, 266.004. The requestor’s rights as a guardian are to be determined by order of the court and approved by DFPS.

Accordingly, if the department determines the requestor is not the guardian of the juvenile offender for purposes of section 58.007, then the submitted information is confidential under section 58.007(c), and the department must withhold it in its entirety under section 552.101 of the Government Code.<sup>1</sup> However, if the department determines the requestor is the guardian of the juvenile offender for purposes of section 58.007, then the requestor has a right to inspect the information under section 58.007(e). *Id.* § 58.007(e). In that event, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2). Thus, we will consider your remaining argument for the information at issue.

Section 552.101 of the Government Code 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

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<sup>1</sup>In this case, our ruling is dispositive and we do not address your other argument to withhold this information.

interest substantially outweighed the negligible public interest in disclosure.<sup>2</sup> *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. However, we note the requestor is a parent of the child victim whose date of birth is at issue. Thus, she has a special right of access to this information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Further, if the department determines the requestor is the guardian of the juvenile offender for purposes of section 58.007, then she has a special right of access to the juvenile offender's date of birth under section 552.023 as well.<sup>3</sup> *See* Gov't Code § 552.023(b); ORD 481. Moreover, we note the requestor has a special right of access to her own date of birth under section 552.023. *See* Gov't Code § 552.023(b); ORD 481. Upon review, we find you have not demonstrated any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department may not withhold any of the submitted information under section 552.101 of the Government Code on this basis.

In summary, if the department determines the requestor is not the guardian of the juvenile offender for purposes of section 58.007 of the Government Code, then the submitted information is confidential under section 58.007(c), and the department must withhold it in its entirety under section 552.101 of the Government Code. However, if the department determines the requestor is the guardian of the juvenile offender for purposes of section 58.007, then the department must release the submitted information to the 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>2</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>3</sup>As previously noted, if the department determines the requestor is not the guardian of the juvenile offender for purposes of section 58.007, then the submitted information is confidential under section 58.007(c), and the department must withhold it in its entirety under section 552.101 of the Government Code. In that case, our ruling is dispositive.

<sup>4</sup>To the extent the information is released, the requestor has a special right of access to the information being released. *See* Fam. Code §§ 58.007(e), 261.201(k); Gov't Code § 552.023(a); ORD 481. Thus, if the department receives another request for this information from a different requestor, then the department must again seek a decision 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.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,

A handwritten signature in black ink, appearing to read 'B. Berger', written over a light blue horizontal line.

Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 604686

Enc. Submitted documents

c: Requestor  
(w/o enclosures)