



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2016

Mr. Coby Wilbanks
Attorney
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2016-11364

Dear Mr. Wilbanks:

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# 613650 (ORR 2015-16-769).

The Fort Bend Independent School District (the "district") received a request for information pertaining to forgery cases filed by the district's police department since August 1, 2013. The district states it has provided some of the requested information to the requestor, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we must address the procedural obligations of the district under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e)(1)(D), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(D). The district received the request for information on March 21, 2016, and the district states it was closed on March 25, 2016. Thus, the district's fifteen-business-day deadline under section 552.301(e) was April 12, 2016. The district submitted some of the information at issue to this office on

April 29, 2016. Thus, the district failed to comply with the procedural requirements mandated by section 552.301(e) regarding this information.¹

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of the claimed exceptions. *See generally id.* § 552.302. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See Open Records Decision Nos. 665 at 5 (2000) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver).* *But see Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure).* Thus, the claim of the district under section 552.108 is not a compelling reason to overcome the presumption of openness, and the district may not withhold any of the information submitted on April 29, 2016, on that ground. However, sections 552.101 and 552.130 of the Government Code can provide a compelling reason to overcome this presumption.² Accordingly, we will consider whether these sections require the district to withhold this 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. 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(c) provides the following:

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

¹We note the district complied with section 552.301 regarding the remaining information at issue.

²The 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).*

(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.

Id. For purposes of Title 3 of the Family Code, a “child” is defined as a person ten years of age or older and under seventeen years of age when the conduct occurred. *Id.* § 51.02(2)(A). Upon review, we find some of the submitted reports involve alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2), .03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). The exceptions in section 58.007 do not appear to apply. Therefore, the district must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.³ However, the suspects at issue in the remaining information are not persons ten years of age or older and under seventeen years of age at the time of the offense. Therefore, the remaining information does not consist of law enforcement records of a juvenile for purposes of section 58.007. *See id.* Thus, the remaining information is not confidential under section 58.007(c) and the district may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The district states the remaining information relates to pending criminal investigations or prosecutions. Based on this representation, we conclude the release of some of this information, which we have marked, would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; 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 district may withhold the information we have marked under section 552.108(a)(1) of the Government 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

³As our ruling is dispositive, we do not address the other argument of the district to withhold this information.

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). 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. 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.⁴ *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. Therefore, the district must withhold the public citizen's date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

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 district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

To conclude, with the exception of basic information, which the district must release, the district may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The district must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (2) the date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the information we have marked under section 552.130 of the Government Code. The district must release the remaining information.

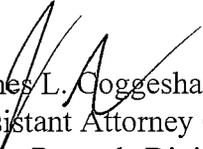
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

⁴Section 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).

[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/eb

Ref: ID# 613650

Enc. Submitted documents

c: Requestor
(w/o enclosures)