



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 23, 2016

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

OR2016-19031

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# 623556 (ORR# 913/16-0388).

The Burleson Police Department (the "department") received a request for the juvenile records pertaining to the requestor.<sup>1</sup> You state you have released some information. You also state the department is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.<sup>2</sup> You further state the department is

---

<sup>1</sup>We note the department sought and received clarification of the information requested. *See Gov't Code* § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See 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 id.* § 552.130(d), (e). 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. *See id.* § 552.147(b).

withholding certain information pursuant to Open Records Decision No. 684 (2009).<sup>3</sup> 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. Section 552.101 encompasses information made confidential by section 261.201 of the Family Code, which 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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:

---

<sup>3</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(1)-(2). Report numbers 10-001758, 10-002982, and 11-004281 consist of information used or developed in investigations of alleged or suspected abuse under chapter 261 of the Family Code. Accordingly, the information at issue falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for the purposes of this section as a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). In this instance, the requestor is the child victim listed in the information, and the requestor is now an adult. Thus, pursuant to section 261.201(k), the department may not withhold report numbers 10-001758, 10-002982, and 11-004281 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)(1) states that a governmental body must redact the identifying information of a victim or witness who is under eighteen years of age and not a child of the parent, managing conservator, or other legal representative requesting the information before releasing information pursuant to section 261.201(k). *See id.* § 261.201(l)(1). Therefore, the department must withhold the identifying information of a victim or witness who is under eighteen years old in report numbers 10-002982 and 10-001758 pursuant to section 261.201(l)(1). Further, section 261.201(l)(2) states a governmental body must redact any information that is excepted from required disclosure under the Act or other law. *See id.* § 261.201(l)(2). Accordingly, we will consider whether the information at issue is otherwise excepted under the Act.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 confidential under section 58.007(c) of the Family Code. This section provides, in relevant 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 Chapter 552, Government Code, or other law.

*Id.* § 58.007(c), (e), (j). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997 are generally confidential. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), a "child" is 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 report numbers 09-8634, 10-001758, 10-002974, 11-004271, and 12-000461 involve children engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Accordingly, this information is generally confidential under section 58.007(c). With respect to report numbers 09-8634 and 10-001758, it does not appear any of the exceptions to disclosure apply. Thus, the department must withhold report numbers 09-8634 and 10-001758 in their entireties under section 552.101 of the Government

Code in conjunction with section 58.007(c) of the Family Code. However, the requestor is a juvenile suspect in the remaining information at issue. As such, the requestor has a right to inspect or copy information concerning herself under section 58.007(e). *Id.* § 58.007(e). Accordingly, the department may not withhold report numbers 10-002974, 11-004271, and 12-000461 from the requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *See id.* However, personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted pursuant to section 58.007(j)(1) of the Family Code. *See id.* § 58.007(j)(1). For the purposes of section 58.007(j), we conclude a juvenile victim or witness is a person who is under eighteen years of age. Thus, the department must withhold any personally identifiable information about any other juvenile suspects, offenders, victims, or witnesses in the remaining information subject to section 58.007 under section 552.101 in conjunction with section 58.007(j)(1). Further, pursuant to section 58.007(j)(2) information that is 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 determine whether the remaining information is otherwise excepted from release under the Act.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The doctrine of common-law privacy also protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Additionally, 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.<sup>4</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.

We note, the requestor has a right of access to her own date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In addition, some of the remaining dates of birth belong to individuals who have been de-identified and whose privacy interest are, thus, protected. Accordingly, with the exception of the requestor's date of birth and the dates of birth of the individuals who have been de-identified, the department must withhold all identifiable public citizens' dates of birth under section 552.101 on the basis of common-law privacy. Furthermore, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold the identifying information of a victim or witness who is under eighteen years of age in report numbers 10-002982 and 10-001758 under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. The department must withhold report numbers 09-8634 and 10-001758 in their entireties under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold any personally identifiable information about any juvenile suspects, offenders, victims, or witnesses in the remaining information subject to section 58.007 of the Family Code under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. With the exception of the requestor's date of birth and the dates of birth of the individuals who have been de-identified, the department must withhold all identifiable public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code

---

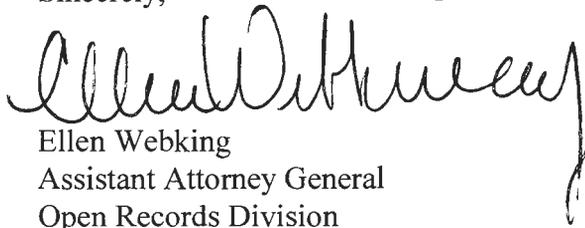
<sup>4</sup>Section 552.102(a) exempts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

on the basis of common-law privacy. The department must release the remaining information.<sup>5</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.

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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/bw

Ref: ID# 623556

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>5</sup>We note this requestor has a right of access to the information being released, which is confidential with respect to the general public. Fam. Code §§ 261.201(k), 58.007(e); Gov't Code § 552.023. Therefore, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.