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ATTORNEY GENERAL OF TEXAS

September 26, 2016

Ms. June B. Harden
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2016-21712

Dear Ms. Harden:

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# 627738 (PIR No. 16-44386).

The Office of the Attorney General (the "OAG") received a request for information pertaining to a specified case.¹ The OAG states it will release most of the requested information. The OAG states it will redact certain information pursuant to sections 552.130(c) and 552.147(b) of the Government Code.² The OAG also states it will redact certain personal e-mail addresses subject to section 552.137 of the Government Code pursuant to the previous determination in Open Records Decision No. 684 (2009).³ The

¹The OAG informs us the requestor was required to make a deposit for payment of anticipated costs for the request under section 552.263 of the Government Code, which the OAG received on July 11, 2016. *See* Gov't Code § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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 requesting a decision from this office under the Act. *Id.* § 552.147(b).

³Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

OAG claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.1325 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.⁴

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. In addition, a federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101 of the Act. *See* Open Records Decision No. 599 at 4 (1992). The OAG raises section 552.101 in conjunction with part 603 of title 20 of the Code of Federal Regulations, which implements the Federal-State Unemployment Compensation Program, and pertains to the confidentiality and disclosure of information related to state unemployment compensation programs. 20 C.F.R. § 603.1 (providing purpose and scope of part 603). Section 1302(a) of title 42 of the United States Code authorizes the Secretary of Labor (the “secretary”) to promulgate rules and regulations necessary to the efficient administration of the functions with which the secretary is charged. *See* 42 U.S.C. § 1302(a). Section 603.4 of title 20 of the Code of Federal Regulations requires state unemployment compensation agencies, such as the Texas Workforce Commission (the “commission”), must protect the confidentiality of unemployment claim information which “reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars, and must include provision for barring the disclosure of any such information[.]” 20 C.F.R. § 603.4(b). “Claim information” means information about whether an individual is receiving, has received, or has applied for unemployment compensation, as well as “[a]ny other information contained in the records of the State [unemployment compensation] agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits.” *Id.* § 603.2(a)(1)(i), (2)(ii). Information in the commission’s files may be disclosed to a requesting agency or other specified parties under certain circumstances. *See Id.* §§ 603.5, .6, .21. Section 603.5(e) provides “[d]isclosure of confidential [unemployment compensation] information to a public official for use in the performance of his or her official duties is permissible.” *Id.* § 603.5(e). “Performance of official duties” means “administration or enforcement of law or the execution of the official responsibilities of a Federal, State, or local elected official.” *Id.* Section 603.9 further states that for disclosures under section 603.5(e), the commission “must require the recipient to safeguard the information disclosed against unauthorized access or redisclosure . . . and must subject the recipient to penalties . . . for unauthorized disclosure[.]” and sets out the required safeguards. *Id.* § 603.9.

⁴We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The OAG states the information it marked consists of confidential unemployment claim information provided to the OAG by the commission. The OAG states the commission maintains this information as part of its administration of the state unemployment compensation program, and the commission has determined that releasing this information to the OAG is necessary for the administration or enforcement of laws under the OAG's purview. *See id.* § 603.5(e). The OAG further states the OAG has executed a confidentiality agreement with the commission with respect to this information. *See id.* § 603.9. We therefore conclude the information the OAG marked is made confidential by section 603.4 of title 20 of the Code of Federal Regulations and must be withheld from the requestor pursuant to section 552.101 of the Government Code in conjunction with section 1302(a) of title 42 of the United States Code and section 603.4 of title 20 of the Code of Federal Regulations.

Section 552.101 of the Government Code 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. *See Fam. Code* § 58.007(c). Section 58.007 provides, in relevant part, the following:

(b) Except as provided by Section 54.051 (d-1) and by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under [Title 3 of the Family Code] may be inspected or copied only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney for a party to the proceeding;
- (4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- (5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(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(b)-(c), (e), (j). Upon review, we find incident report number 980600707 involves alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (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 when the conduct occurred), .03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Therefore, incident report number 980600707 is generally confidential under section 58.007(c) of the Family Code. However, the OAG acknowledges, the requestor is an attorney of one of the juvenile offenders at issue in incident report number 980600707 and the juvenile is now an adult. Accordingly, the OAG may not withhold incident report number 980600707 under section 552.101 of the Government Code on that ground. *See id.* § 58.007(e). However, section 58.007(j)(1) of the Family Code states the personally identifiable information concerning any other juvenile suspect, offender, victim, or witness must be redacted. *Id.*

§ 58.007(j)(1). Accordingly, the OAG must withhold the identifying information of the other juvenile suspects and offenders under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. In addition, section 58.007(j)(2) provides 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 whether the remaining information at issue is otherwise excepted from disclosure.

The OAG informs us the information it marked consists of juvenile court records maintained by the OAG concerning a juvenile offender. We understand the information at issue relates to a juvenile who was a party to proceedings under the Juvenile Justice Code, title 3 of the Family Code. Although the requestor is an attorney for the individual at issue, the request reflects the requestor represents the individual in a separate matter that is not a proceeding under the Juvenile Justice Code. Accordingly, we find the requestor is not a person or entity authorized to access this information under section 58.007(b). Accordingly, the information the OAG marked is generally confidential under section 58.007(b) of the Family Code. Thus, the OAG must generally withhold the information at issue under section 552.101 of the Government Code in conjunction with section 58.007(b) of the Family Code.

We note, however, the information at issue contains the fingerprints of the requestor's client. Access to fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.001 provides in part that "[i]n this chapter . . . '[b]iometric identifier' means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." Gov't Code § 560.001(1). Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. Section 560.002 provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, section 560.002(1)(A) of the Government Code gives an individual or his authorized representative a right of access to his own fingerprint information. As previously noted, the requestor is an attorney for the individual at issue. Accordingly, the requestor has a special right of access to the fingerprints at issue pursuant to section 560.002 of the Government Code.

Thus, although the information at issue is generally confidential under section 58.007(b) of the Family Code, section 560.002 of the Government Code provides the requestor with a right of access to his client's fingerprints. Therefore, there is a conflict of laws between section 58.007(b) of the Family Code and section 560.002 of the Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See id.* § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In this instance, because sections 560.002 and 560.003 of the Government Code specifically govern access to biometric identifiers, these provisions are more specific

than the general confidentiality section 58.007(b) of the Family Code provides for juvenile probation records. Thus, the statutory right of access granted by section 560.002 of the Government Code prevails over the more general confidentiality provision of section 58.007(b) of the Family Code. Therefore, the fingerprints, which we have marked, must be released to this requestor under section 560.002 of the Government Code. The OAG must withhold the remaining information the OAG marked under section 552.101 of the Government Code in conjunction with section 58.007(b) of the Family Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F or subchapter E-1 of the Government Code. Upon review, we find the information the OAG marked consists of CHRI the OAG must withhold under section 552.101 in conjunction with section 411.083 of the Government Code.⁵

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

⁵We note the requestor can obtain his client’s CHRI from DPS. *Gov’t Code* § 411.083(b)(3).

interest substantially outweighed the negligible public interest in disclosure.⁶ *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. Thus, the OAG must withhold the public citizen's date of birth it marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1325 of the Government Code provides as follows:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Gov't Code § 552.1325. Upon review, we find the information the OAG marked consists of a victim impact statement or was submitted for purposes of preparing a victim impact statement as defined by article 56.03 of the Code of Criminal Procedure. *See* Code Crim. Proc. art. 56.03. We also find the victim, in this instance, meets the definition of a crime victim under article 56.32 of the Code of Criminal Procedure. *See id.* art. 56.32. Accordingly, the OAG must withhold the name, social security number, address, telephone number of the crime victim, and information that otherwise identifies or tends to identify the crime victim in the information the OAG marked under section 552.1325 of the Government Code.

In summary, the OAG must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 1302(a) of title 42 of the United States Code

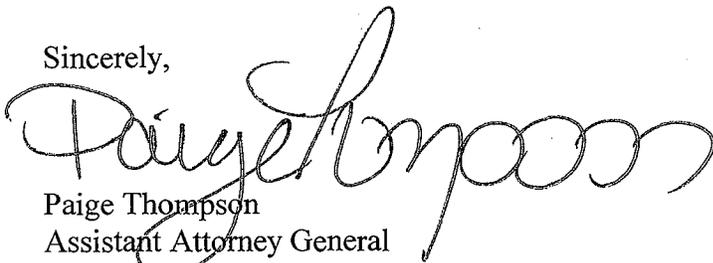
⁶Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

and section 603.4 of title 20 of the Code of Federal Regulations. The OAG must withhold the identifying information of the other juvenile suspects and offenders in incident report number 980600707 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The fingerprints, which we have marked, must be released to this requestor under section 560.002 of the Government Code. The OAG must withhold the remaining information the OAG marked under section 552.101 of the Government Code in conjunction with section 58.007(b) of the Family Code. The OAG must withhold (1) the information the OAG marked under section 552.101 in conjunction with section 411.083 of the Government Code; (2) the public citizen's date of birth it marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the name, social security number, address, telephone number of the crime victim, and information that otherwise identifies or tends to identify the crime victim in the information the OAG marked under section 552.1325 of the Government Code. The OAG must release the remaining information to this requestor.⁷

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, 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

⁷The requestor has a special right of access to information being released pursuant to section 58.007(e) of the Family Code and section 560.002 of the Government Code. See Fam. Code § 58.007(e); Gov't Code § 560.002. If the OAG receives another request for this information from a different requestor, then the OAG should again seek a decision from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

Ref: ID# 627738

Enc. Submitted documents

c: Requestor
(w/o enclosures)