



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 18, 2016

Mr. Josh Marcum  
Assistant City Attorney  
Office of the City Attorney  
The City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2016-23346

Dear Mr. Marcum:

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# 630849 (City PIR No. W054049).

The City of Fort Worth (the "city") received a request for all calls from a specified address during a certain time period, including a specified incident. You state you have released some information. 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 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:

(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 [the Act], or other law.

*Id.* § 58.007(c), (e), (j)(2). Upon review, we find the city has failed to demonstrate incident number 160230310 depicts an individual who is ten years of age or older and under the age of seventeen as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. *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, the city may not withhold incident number 160230310 under section 552.101 in conjunction with section 58.007. However, upon review, we find incident number 160229109 involves alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. We note the requestor may be a parent or guardian of the juvenile offenders at issue. Therefore, we must rule conditionally.

If the requestor is not a parent or guardian of the juvenile offenders, then the city must withhold incident number 160229109 in its entirety under section 552.101 in conjunction with section 58.007(c). If the requestor is a parent or guardian of the juvenile offenders, then the city may not withhold the information at issue on that ground. *See id.* § 58.007(e). However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or law must be redacted before a governmental body releases information pursuant to section 58.007(e). *Id.* § 58.007(j)(2). Thus, in this instance, we will determine whether the information at issue 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 demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, 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. *Indus. Found.*, 540 S.W.2d 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 interest substantially outweighed the negligible public interest in disclosure.<sup>1</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.

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, however, we note the requestor is the spouse of the individual whose privacy interests are at issue. Thus, the requestor may be acting as the authorized representative of her spouse, and may have a right of access to information pertaining to her spouse that would otherwise be confidential under common-law privacy. *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)

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<sup>1</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).

(privacy theories not implicated when individuals request information concerning themselves). Accordingly, if the requestor is acting as the authorized representative of her spouse, then the city may not withhold the information we have marked under section 552.101 of the Government Code on the basis of common-law privacy. If the requestor is not acting as the authorized representative of her spouse, the city must withhold the information we have marked under section 552.101 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. We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the city may not withhold motor vehicle record information relating to the requestor under section 552.130. In addition, as noted above, the requestor may be her spouse's authorized representative, and may have a right of access to information pertaining solely to him that would otherwise be confidential. *See Gov't Code* § 552.023(a); ORD 481 at 4. Thus, if the requestor is acting as her spouse's authorized representative, then the city may not withhold any motor vehicle record information pertaining solely to the requestor's spouse from this requestor under section 552.130. However, if the requestor is not acting as her spouse's authorized representative, then the city must withhold any motor vehicle record information pertaining solely to the requestor's spouse, which we have marked, under section 552.130. In any event, the city must withhold the license plates we have marked under section 552.130 if they pertain to any other individual for whom the requestor is not acting as the authorized representative.

In summary, if the requestor is not a parent or guardian of the juvenile offenders, then the city must withhold incident number 160229109 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor is not acting as the authorized representative of her spouse, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, in addition to any motor vehicle record information pertaining solely to the requestor's spouse, which we have marked, under section 552.130 of the Government Code. The city must withhold the license plates we have marked under section 552.130 if they pertain to any other individual for whom the requestor is not acting as the authorized representative. The remaining information must be released.

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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive style with a large initial "C".

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 630849

Enc. Submitted documents

c: Requestor  
(w/o enclosures)