



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2015

Mr. Vance Hinds
Assistant County & District Attorney
County of Ellis
109 South Jackson
Waxahachie, Texas 75165

OR2015-20188

Dear Mr. Hinds:

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# 580626.

The Ellis County Sheriff's Office and the Ellis County District Attorney's Office (collectively, the "county") received a request for information pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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 other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. You assert the submitted information is subject to this section. However, we note section 58.007 is inapplicable in this instance because the conduct at issue occurred in 1987. Accordingly, we will address your argument under former section 51.14 of the Family Code.

Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to juvenile conduct that occurred before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. *See* Act of

May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 only applies to records of a “child,” which is defined as a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See* Fam. Code § 51.02. In this instance, the submitted information pertains to a murder investigation committed by children prior to January 1, 1996; thus, it is generally subject to section 51.14. *See id.* § 51.03 (defining “delinquent conduct”).

However, the submitted information reveals the juveniles at issue were certified, tried, and convicted as adults on the charge of murder. Section 51.14(d) of the Family Code states the following, in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and *except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution*, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public[.]

Id. § 51.14(d) (repealed 1995) (emphasis added). This former provision expressly provided an exception to confidentiality for records of juvenile offenders who were certified to stand trial as an adult. Consequently, because the defendants were tried as adults, we conclude the submitted information is not confidential under former section 51.14(d). As such, the county may not withhold the submitted information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Id. § 1703.306(a), (b). Upon review, we find the information we have marked was acquired from a polygraph examination. The requestor does not fall within any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306(a). Accordingly, the county must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 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 interest substantially outweighed the negligible public interest in disclosure.¹ *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, however, the common-law right to privacy is a personal right that "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); see also Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find the county must withhold all living public citizens' dates of birth under section 552.101 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175.² Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). We note the protection afforded by section 552.1175 generally does not lapse at death, as it is intended to protect the privacy of both the individual and the individual's family members. However, because the protections of dates of birth and social security numbers under section 552.1175 are intended solely to protect the privacy of the individual, those protections lapse at death. See *Moore*, S.W.2d at 491. Accordingly, the county must withhold the information we have marked under section 552.1175 of the Government Code if the peace officer elected to restrict access to his information in accordance with section 552.1175(b). If the individual did not elect to restrict access to his information in accordance with section 552.1175(b), then the county may not withhold the marked information under section 552.1175.

¹Section 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).

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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(a). Accordingly, the county must withhold the types of motor vehicle record information you have marked under section 552.130 of the Government Code.

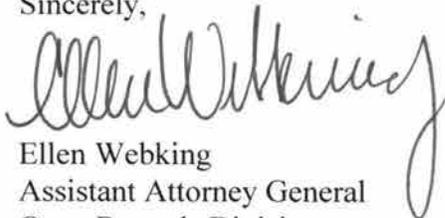
Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Upon review, we find the county may withhold the social security numbers you marked under section 552.147 of the Government Code.

In summary, the county must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The county must withhold all living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold the information we have marked under section 552.1175 of the Government Code if the peace officer elected to restrict access to his information in accordance with section 552.1175(b). The county must withhold the types of motor vehicle record information you have marked under section 552.130 of the Government Code. The county may withhold the social security numbers you have marked under section 552.147 of the Government Code. The county 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/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/akg

Ref: ID# 580626

Enc. Submitted documents

c: Requestor
(w/o enclosures)