



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2016

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2016-10889

Dear Ms. Lentz:

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# 609933.

The Williamson County Sheriff's Office (the "sheriff's office") received three requests from the same requestor for information pertaining to a named individual and two specified addresses. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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 section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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:

¹We understand the sheriff's office to raise section 552.147 based on its markings in the submitted documents.

(1) a report of alleged or suspected abuse or neglect made under this chapter 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 this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find case numbers 91-06-319 and 09-03-00049 relate to investigations of alleged or suspected child abuse or neglect conducted by the sheriff's office. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as 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), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the sheriff's office must withhold case numbers 91-06-319 and 09-03-00049 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-Fourth Legislature, former section 51.14(d) provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. *See* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Section 51.14(d) 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. Former section 51.14 provided 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, but inspection of the files and records is permitted by:

(1) a juvenile court having the child before it in any proceeding;

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14(d) (repealed 1995). A “child” 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 id.* § 51.02(2). Upon review, we find the information you have marked pertains to juvenile conduct that occurred prior to January 1, 1996, and involves a suspect who was ten years of age or older and under seventeen years of age at the time of the offense. Further, the requestor does not fall within the categories in former section 51.14(d) under which inspection of the records would be permitted. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)). Therefore, we find former section 51.14(d) is applicable to the information you have marked. Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating a need for supervision engaged in by child). Accordingly, the sheriff’s office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.³

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state some of the remaining information, which you have indicated, pertains to a closed case that did not result in conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to the information you have indicated.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth or motor vehicle record information protected by section 552.130 of the Government Code. *See id.* at 3-4. Thus, with the exception of the basic information, the sheriff’s office may withhold the information you have marked under section 552.108(a)(2) of the Government Code.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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). Further, 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.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.

However, because “the right of privacy is purely personal,” that right “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 *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 652I (1977))); 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 (1981) (“the right of privacy is personal and lapses upon death”). Thus, the sheriff's office may not withhold information pertaining solely to a deceased individual under section 552.101 of the Government Code in conjunction with common-law privacy.

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information that pertains solely to a deceased individual, the sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information either is not highly intimate and embarrassing and not of legitimate public interest, or

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).

pertains to deceased individuals. Therefore, no portion of the remaining information is confidential under common-law privacy, and the sheriff's office may not withhold any of the remaining information under section 552.101 on that ground.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov't Code § 552.130(a). We note the purpose of section 552.130 is to protect personal privacy interests. As noted above, the right of privacy lapses at death. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272. Therefore, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. Accordingly, with the exception of the deceased individual's driver's license information, the sheriff's office must withhold the 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 sheriff's office may withhold the social security numbers of living individuals, which you have marked, under section 552.147 of the Government Code. However, the sheriff's office may not withhold the social security number you have marked that belongs to a deceased individual under section 552.147.

In summary, the sheriff's office must withhold case numbers 91-06-319 and 09-03-00049 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. With the exception of the basic information, the sheriff's office may withhold the information you have marked under section 552.108(a)(2) of the Government Code. With the exception of the information that pertains solely to a deceased individual, the sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the deceased individual's driver's license information, the sheriff's office must withhold the information you have marked under section 552.130 of the Government Code. The sheriff's office may withhold the social security numbers of living individuals, which you have marked, under section 552.147 of the Government Code. The sheriff's office 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,

A handwritten signature in black ink, appearing to read "Lee Seidlits", written in a cursive style.

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/bw

Ref: ID# 609933

Enc. Submitted documents

c: Requestor
(w/o enclosures)