



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2016

Ms. Kristie L. Lewis
Staff Attorney
Houston Police Department
1200 Travis Street, 21st Floor
Houston, Texas 77002

OR2016-20969

Dear Ms. Lewis:

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# 626845 (ORU No. 16-4965).

The Houston Police Department (the "department") received a request for sixteen categories of information related to a specified capital murder case. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have also received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note the requestor excluded from his request "any identifying information, photograph, etc., related to the juvenile suspect/defendant" and agreed "to the redaction of any and all information related to the juvenile suspect/defendant in this case." Thus, the juvenile's identifying information, including the juvenile's name, parents' names, family members' names, and home address, as well as the juvenile's photograph, are not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release

¹We 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 those records contain substantially different types of information than that submitted to this office.

this information in response to this request. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

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 statutory confidentiality provisions. 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 allegedly committed by a child 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 juvenile at issue was certified, tried, and convicted as an adult 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 defendant was tried as an adult, we conclude the submitted information is not confidential under former section 51.14(d). As such, the department may not withhold the submitted information under section 552.101 on that basis.

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. This office has held common-law privacy protects the identity of a juvenile offender. *See Open Records Decision No. 394 (1983); cf. Fam. Code § 51.14(d).* Additionally, a compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. 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 that individual has significant privacy interest in compilation of one's criminal history). We also find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Furthermore, 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.² *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. However, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates to only a deceased individual. Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. See *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).

We note some of the submitted information pertains to a deceased individual or individuals who have been de-identified and whose privacy interests are, thus, protected. Upon review, the department must withhold the information we have marked, and the dates of birth of any living, identifiable public citizens under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information may be subject to section 552.130 of the Government Code, which excepts from disclosure "information [that] relates to . . . a motor vehicle title or registration issued by an agency of this state or another state or country[.]"³ See Gov't Code § 552.130(a)(2). The submitted information contains motor vehicle record

²Section 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).

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information, which we have marked. However, we are unable to determine whether the marked information constitutes real motor vehicle record information. Thus, to the extent information we have marked constitutes real motor vehicle record information, the department must withhold this information under section 552.130 of the Government Code. To the extent the information we have marked consists of fictitious motor vehicle record information, it may not be withheld under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked, and the dates of birth of any living, identifiable public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent information we have marked constitutes real motor vehicle record information, the department must withhold this information under section 552.130 of the Government Code. The remaining responsive information must be released.⁴

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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

Ref: ID# 626845

Enc. Submitted documents

c: Requestor

⁴We note the remaining information contains social security numbers. Section 552.147 of the Government Code authorizes a governmental body to redact the social security number of a living person without requesting a decision from this office. See Gov't Code § 552.147(b).

(w/o enclosures)