



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 13, 2022

Mr. James M. Yakovsky
County Attorney
Angelina County
P.O. Box 1845
Lufkin, Texas 75902-1845

OR2022-38583

Dear Mr. Yakovsky:

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# 989443.

The Angelina County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a named individual for a specified period of time. You state some information has been released. 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. This section encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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:

- (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). You state report 15-10878 was used in an investigation of alleged child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). You do not indicate the district has adopted any rules that would permit the release of the responsive information. Accordingly, we find report 15-10878 is subject to chapter 261 of the Family Code. Therefore, we conclude report 15-10878 is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses section 771.061(a) of the Health and Safety Code, which provides “[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity, including a regional planning commission, emergency communications district, or public safety answering point, in providing 9-1-1 service . . . is confidential[.]” Health & Safety Code § 771.061(a). You explain Angelina County is a participating member in a 9-1-1 system operated by the Deep East Texas Council of Governments, which is the Regional Planning Commission for State Planning Region 14 (the “commission”). You state the telephone numbers at issue were provided by the 9-1-1 service supplier to the commission, through which the sheriff’s office received the 9-1-1 call at issue in the information. Based on your representations and our review, we conclude the telephone numbers at issue are confidential under section 771.061(a) of the Health and Safety Code and must be withheld under section 552.101 of the Government Code on that basis. *See also* Open Records Decision No. 661 at 1-2 (1999).

The sheriff’s office asserts the dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. 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. The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). However, the right to privacy is a personal right that lapses at death and the common-law right to privacy does not encompass information that relates only to a deceased individual. *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)

¹ As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

(“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”). Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy ground. Thus, the sheriff’s office must withhold all living public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, report 15-10878 is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. The sheriff’s office must withhold telephone numbers in Exhibit G under section 552.101 of the Government Code in conjunction with section 771.061 of the Health and Safety Code. The sheriff’s office must withhold all living public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Paige Lay
Assistant Attorney General
Open Records Division

PL/pt

Ref: ID# 989443

Enc. Submitted documents

c: Requestor
(w/o enclosures)