



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2014

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2014-07815

Dear Ms. Winn:

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# 522069.

The Travis County Attorney's Office (the "county attorney's office") received a request for information pertaining to a specified case. You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-17407 (2013). In that ruling, we determined the county attorney's office must withhold certain information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and, with the exception of basic information, may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed as to the information subject to section 552.101 in conjunction with section 411.083 of the Government Code, the county attorney's office must continue to rely on Open Records Letter No. 2013-17407 with respect to the information subject to section 552.101 in conjunction section 411.083 of the Government Code as a previous determination and withhold the information at issue in accordance with that ruling. *See*

Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, you acknowledge you no longer object to disclosure of the remaining information at issue on the basis of section 552.108 of the Government Code. Therefore, we find the circumstances on which the previous ruling is based have changed and you may not rely on Open Records Letter No. 2013-17407 as a previous determination with regard to the information at issue. *See* ORD 673. Accordingly, we will address the submitted arguments against release of the information at issue.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the county attorney’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld 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. Upon review, we find portions of the submitted information consist of motor vehicle record information. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 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) (privacy theories not implicated when individuals request information

concerning themselves). Accordingly, the county attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

We note the remaining information contains an e-mail address that is subject to section 552.137 of the Government Code.¹ Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the county attorney's office must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the county attorney's office must continue to rely on Open Records Letter No. 2013-17407 with respect to the information subject to section 552.101 in conjunction section 411.083 of the Government Code as a previous determination and withhold the information at issue in accordance with that ruling. The county attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, the information we marked under section 552.130 of the Government Code, and the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The remaining information must be released.²

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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note the information being released in this instance includes information that may be confidential with respect to the general public. *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) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the county attorney's office receives another request for this information from a different requestor, the county attorney's office must again seek a ruling from this office.

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 cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 522069

Enc. Submitted documents

c: Requestor
(w/o enclosures)