



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2014

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

OR2014-10172

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# 524215.

The Travis County Attorney's Office (the "county attorney's office") received a request for the depositions of five named individuals. You state you will release some of the requested information. You state depositions for three of the named individuals do not exist.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.107, and 552.1175 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(2) of the Government Code provides information is excepted from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). You contend portions of the submitted information consist of information that

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²Although you raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise for information not held by the county attorney's office in an employment context.

is subject to an Agreed Protective Order (the “order”) entered by a court. You have submitted the order, which provides “[a]ll documents produced by Defendant in response to any discovery request from Plaintiff . . . , including documents or copies given by Defendant to Plaintiff voluntarily prior to a required response to a discovery request are included in [the order] and are hereinafter referred to as ‘Included Documents.’” *State ex rel. Escamilla v. Lehmborg*, No. D-1-GV-13-000421 (98th Dist. Ct., Travis Co., Tex., Dec. 11, 2013) (agreed protective order). The order further provides the plaintiff may share the Included Documents with certain individuals identified in the order and may use the Included Documents “as part of the examination or cross examination of any witness in this litigation” including “in deposition testimony.” *Id.* Further, the order states that “[a]ny person with whom Plaintiff shares Included Documents shall be subject to [the order].” *Id.* You indicate some of the information was obtained from the defendant by the county attorney’s office, which represents the plaintiff, and this information was used in the deposition testimony of the defendant in the litigation that is the subject of the order. However, we note the order provides its protection “continue[s] to be binding after the conclusion of this litigation, except there shall be no restriction on documents that are used as exhibits in Court.” *Id.* You state, at the time of the present request for information, the litigation at issue was concluded. Based on your representations and our review of the order and the information at issue, we conclude, to the extent the information is subject to the order and was not used as an exhibit in court, it may be withheld under section 552.107(2). However, to the extent the information subject to the order was used as an exhibit in court, it is not protected by the order and may not be withheld under section 552.107(2).

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 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). However, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 470 at 4 (1987) (job performance does not generally constitute public employee’s private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee’s job was performed cannot be said to be of minimal public interest). Upon review, we find you have failed to demonstrate the information at issue, which consists of the unsealed deposition testimony of a public official who was the defendant in a civil case, is both highly intimate or embarrassing *and* of no legitimate public interest. Thus, the information at issue may not be withheld under section 552.101 in conjunction with common-law privacy.

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. Section 552.1175 applies, in part, to “employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]” *Id.* § 552.1175(a)(5). The submitted information pertains to the Travis County District Attorney. Thus, if the district attorney elects to restrict access to her information in accordance with section 552.1175(b), the county attorney’s office must withhold the information we have marked under section 552.1175. If she does not make an election, the county attorney’s office may not withhold this information under section 552.1175.

We note a portion of the remaining information is subject to section 552.130 of the Government Code.³ Section 552.130 provides 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 Texas or another state or country is excepted from public release. *Id.* § 552.130(a). We conclude the county attorney’s office must withhold the information we have marked under section 552.130.

In summary, to the extent the submitted information is subject to the protective order and was not used as an exhibit in court, the county attorney’s office may withhold such information under section 552.107(2) of the Government Code. If the district attorney elects to restrict access to her information in accordance with section 552.1175(b) of the Government Code, the county attorney’s office must withhold the information we have marked under section 552.1175 of the Government Code. The county attorney’s office must withhold the information we have marked under section 552.130 of the Government Code. The county attorney’s office must release the remaining information.

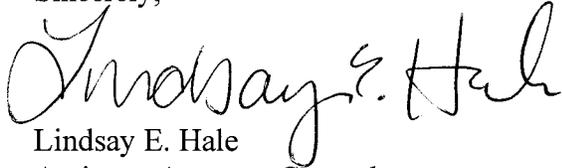
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

³The 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).

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 that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 524215

Enc. Submitted documents

c: Requestor
(w/o enclosures)