



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 5, 2016

Ms. Leigh M. Tomlin
Public Information Officer
Texas Forensic Science Commission
1700 North Congress Avenue, Suite 445
Austin, Texas 78701

OR2016-00150

Dear Ms. Tomlin:

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# 592931.

The Texas Forensic Science Commission (the "commission") received two requests for information pertaining to a specified criminal incident involving three named individuals as well as all communications with the American Board of Forensic Odontology during a specified time period. You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 10 of article 38.01 of the Code of Criminal Procedure, which provides the following:

¹Although you do not raise section 552.137 in your brief, we understand you to raise this exception based on your markings in the documents.

Information that is filed as part of an allegation of professional misconduct or professional negligence or that is obtained during an investigation of an allegation of professional misconduct or professional negligence is not subject to release under the Act, until the conclusion of an investigation by the commission under Section 4.

Crim. Proc. Code art. 38.01, § 10. The commission contends Exhibits E and F are excepted from disclosure under section 10. You state the commission is currently investigating a complaint related to forensic bite mark analysis. You also state Exhibits E and F were obtained from outside parties during the investigation. Based on these representations and our review, we find the submitted Exhibits E and F, in their entirety, are subject to section 10. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Therefore, the commission must withhold Exhibits E and F under section 552.101 of the Government Code in conjunction with section 10 of article 38.01 of the Code of Criminal Procedure.

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 §52.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us a member of the public has affirmatively consented to the release of the e-mail address contained in the submitted materials. Therefore, the commission must withhold the e-mail addresses you and we have marked under section 552.137.

We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the commission must withhold Exhibits E and F under section 552.101 of the Government Code in conjunction with section 10 of article 38.01 of the Code of Criminal Procedure. The commission must also withhold the e-mail addresses you and we have marked under section 552.137. The remaining information must be released, but any information subject to copyright may only be released in accordance with copyright law.

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 "Matthew Taylor", with a long horizontal flourish extending to the right.

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/bw

Ref: ID# 592931

Enc. Submitted documents

c: Requestor
(w/o enclosures)