



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 18, 2015

Mr. Isidro R. Alaniz  
District Attorney  
49th Judicial District  
1110 Victoria, Suite 401  
Laredo, Texas 78040

OR2015-05209

Dear Mr. Alaniz:

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# 556991.

The Webb County District Attorney's Office (the "district attorney's office") received a request for the names of the grand jurors who sat on the panel of a specified case and all information related to the specified case. You state you have released a portion of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.1175 of the Government Code.<sup>1</sup> We have 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 submitted arguments 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 other statutes make confidential, such as section 576.005 of the Health and Safety Code, which provides, "[r]ecords of a mental health facility that directly or indirectly identify a present, former,

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<sup>1</sup>Although you raise section 552.117 of the Government Code for the submitted information, we note section 552.1175 is the proper exception to raise for information held in a non-employment context.

or proposed patient are confidential unless disclosure is permitted by other state law.” Health & Safety Code § 576.005. You contend the information at issue consists of records of a mental health facility that directly or indirectly identify a patient. Upon review, we find the confidentiality provision of section 576.005 applies to the information at issue. We are unaware of any other state law that would permit disclosure of this information under the present circumstances. Accordingly, the district attorney’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

(a) The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records may not be withheld, subject to a discretionary exception under [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

(1) under a subpoena or authority of other law; or

(2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. We note a portion of the submitted information consists of photographs taken during an autopsy. We note neither of the statutory exceptions to confidentiality is applicable in this instance. Upon review, we find the district attorney’s office must withhold the photographs we have marked under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

Section 552.101 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note the common-law right to privacy is a personal right that “terminates upon the death of the person whose privacy is

invaded.” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. 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). Therefore, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 of the Government Code states in pertinent part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov’t Code § 552.108(a)(4). A governmental body claiming an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). You state the submitted PowerPoint presentation was prepared by prosecutors in the district attorney’s office representing the state in the course of preparing for criminal litigation. You further state the information at issue reflects the mental impressions or legal reasoning of these prosecutors. Upon review, we conclude section 552.108(a)(4) of the Government Code is applicable to the information you seek to withhold. Thus, the district attorney’s office may withhold the PowerPoint presentation, which we have marked, under section 552.108(a)(4) of the Government Code.<sup>2</sup>

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" Gov't Code § 552.1175(a)(1). To the extent the information we have marked is related to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175. If the individual whose information is at issue is not a licensed peace officer or does not elect to restrict access to his information, the marked information may not be withheld under section 552.1175 of the Government Code.

Section 552.130 of the Government Code 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.<sup>3</sup> *Id.* § 552.130(a). Upon review, the district attorney's office must withhold the motor vehicle record information we have marked and indicated in the submitted recordings and photographs under section 552.130 of the Government Code.

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 id.* § 552.137(a)-(c). The e-mail address at issue is not within the scope of section 552.137(c). Accordingly, the district attorney's office must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release.

In summary, the district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code. The district attorney's office must withhold the photographs we have marked under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The district attorney's office must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The district attorney's office may withhold the submitted PowerPoint presentation, which we have marked, under section 552.108(a)(4) of the Government Code. If the individual at issue is currently a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), the district attorney's office must

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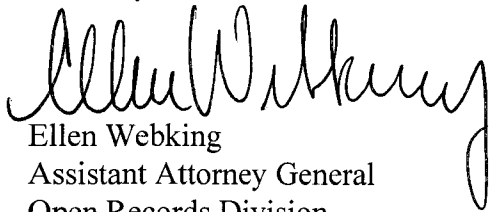
<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold the information we have marked under section 552.1175 of the Government Code. The district attorney's office must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. The district attorney's office must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release. 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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 556991

Enc. Submitted documents

c: Requestor  
(w/o enclosures)