



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 21, 2016

Mr. Sterling Harmon
Appellate Chief
McLennan County Criminal District Attorney's Office
219 North 6th Street, Suite 200
Waco, Texas 76701

OR2016-21358

Dear Mr. Harmon:

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# 627798.

The McLennan County Criminal District Attorney's Office (the "district attorney's office") received a request for the entire investigative files in two specified cases. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-23857 (2015). In Open Records Letter No. 2015-23857, we determined, except for basic information, the district attorney's office may withhold the information at issue under section 552.108(a)(4) of the Government Code and the district attorney's office must withhold certain information from basic information under section 552.101 in conjunction with common-law privacy. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously submitted and ruled on by this office, we conclude the district attorney's office may continue to rely on Open Records Letter

No. 2015-23857 as a previous determination and withhold the information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address the district attorney's office's arguments against release of the submitted information, which is not subject to the prior ruling.

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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. Upon review, we agree the submitted information contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entirety of the information must be withheld to protect the individual's privacy. In this instance, withholding only the individual's identity or certain details of the investigation from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the district attorney's office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the requested information is identical to the information previously requested and ruled on by this office, we conclude the district attorney's office may continue to rely on Open Records Letter No. 2015-23857 as a previous determination and withhold the information in accordance with that ruling. The district attorney's office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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 'Kw', with a horizontal line extending to the right.

Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/dls

Ref: ID# 627798

Enc. Submitted documents

c: Requestor
(w/o enclosures)