



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2017

Ms. Annalisa Davila
Deputy Director
El Paso County Community Supervision and Corrections Department
800 East Overland, Suite 100
El Paso, Texas 79901

OR2017-02318

Dear Ms. Davila:

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# 644184 (PIR# 2016-07).

The El Paso County Community Supervision and Corrections Department (the "department") received a request for the following items pertaining to a specified investigation: 1) a grievance made by a named individual; 2) the statement made by another named individual; and 3) specified written notes taken by two named individuals. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the present request because it does not pertain to any of the information requested by the requestor. This ruling does not address the public availability of the non-responsive information, which we marked, and the department need not release it in response to this request.

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. This exception encompasses information that other statutes make

¹We note the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

confidential. Section 76.006(g) of the Government Code provides that “[a] document evaluating the performance of an officer of the department who supervises defendants placed on community supervision is confidential.” *Id.* § 76.006(g). The term “department” in this section “means a community supervision and corrections department established under [chapter 76 of the Government Code].” *Id.* § 76.001(4). You claim the responsive information evaluates the performance of an officer of the department who supervises defendants placed on community supervision. Upon review, we find none of the responsive information evaluates the performance of an officer of the department. Thus, no portion of the responsive information may be withheld under section 552.101 of the Government Code in conjunction with section 76.006(g) of the Government Code.

Section 552.101 of the Government Code 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. Upon review, we find the department has failed to demonstrate the responsive information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions, the department must release the responsive 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 information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 644184

Enc. Submitted documents

c: Requestor
(w/o enclosures)