



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 21, 2017

Ms. June B. Harden  
Assistant Attorney General  
Assistant Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2017-29087

Dear Ms. Harden:

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# 687370 (PIR No. 17-47622).

The Office of the Attorney General (the "OAG") received a request for a specified police report involving the requestor. Although the OAG takes no position as to whether the submitted information is excepted under the Act, the OAG states release of this information may implicate the interests of the Fort Bliss Military Police of the United States Department of the Army (the "Army"). Accordingly, the OAG states it notified the Army of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. The OAG has forwarded us comments from the Army. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the Army's arguments and reviewed the submitted representative sample of information.<sup>1</sup>

---

<sup>1</sup>We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, the Army argues the submitted information is not subject to the Act. The Act applies to “public information,” which is defined in section 552.002 of the Government Code as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Gov’t Code § 552.002(a). Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Information that is written, produced, collected, assembled, or maintained by a governmental body may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov’t Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). Information is “in connection with the transaction of official business” if it is “created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer’s or employee’s official capacity, or a person or entity performing official business or a government function on behalf of a governmental body, and pertains to official business of the governmental body.” *Id.* § 552.002(a-1). Moreover, section 552.001 of the Act provides it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a).

The Army contends the submitted information is a federal record and is not subject to the Act. The Army asserts the submitted information was provided to the OAG in the course of

its law enforcement activities and access to the report should be determined under federal law rather than Texas law. However, we note the information at issue is maintained by the OAG in furtherance of official business of the OAG or a government function of the OAG. Accordingly, we find this information was collected, assembled, or maintained in connection with the transaction of the OAG's official business. Further, the OAG has submitted this information as being subject to the Act. Therefore, we conclude the submitted information is subject to the Act and the OAG must release it unless the information falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>2</sup> *Id.* § 552.101. This exception encompasses information other statutes make confidential. The Army references the federal Freedom of Information Act ("FOIA"), chapter 552 of the United States Code. This office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. *See* Attorney General Opinions H-917 (1976), H-836 (1974); Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183(1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. In Open Records Decision No. 561, we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we noted the general rule that FOIA, section 552 of title 5 of the United States Code, applies only to federal agencies and does not apply to records held by state agencies. ORD 561 at 6. Further, we stated information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded, "when information in the possession of a federal agency is "deemed confidential by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law." *Id.* at 7. The Army asserts public access to the submitted information should be administered through FOIA. However, the Army does not direct us to a specific FOIA provision that applies to the submitted information. Thus, the OAG may not withhold any portion of the submitted information under section 552.101 on the basis of FOIA.

Section 552.101 of the Government Code encompasses 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

---

<sup>2</sup>Although the Army does not explicitly raise section 552.101 of the Government Code, we understand the Army to raise this exception based on the substance of its brief.

demonstrated. *See 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). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the OAG must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>3</sup> *See* Gov't Code § 552.130. We note, however, because section 552.130 is designed to protect the privacy of individuals, the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, if the motor vehicle record information we marked belongs to the requestor, the OAG may not withhold it from the requestor under section 552.130. However, if the motor vehicle record information we marked does not belong to the requestor, the OAG must withhold the information we marked under section 552.130 of the Government Code.

In summary, the OAG must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the motor vehicle record information we marked does not belong to the requestor, the OAG must withhold the information we marked under section 552.130 of the Government Code. The OAG must release the remaining information to this requestor.<sup>4</sup>

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.

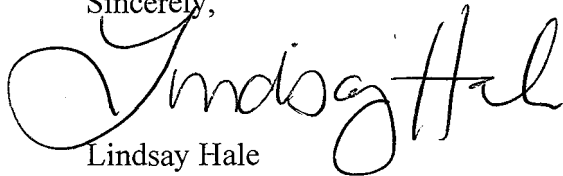
---

<sup>3</sup>This office 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).

<sup>4</sup>We note the information being released includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code §552.147(b). However, we note the requestor has a special right to access to her social security number. *Id.* § 552.023(b), ORD 481 at 4.

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,

A handwritten signature in black ink that reads "Lindsay Hale". The signature is written in a cursive, flowing style with a large initial "L".

Lindsay Hale  
Assistant Attorney General  
Open Records Division

LH/eb

Ref: ID# 687370

Enc. Submitted documents

c: Requestor  
(w/o enclosures)