



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 16, 2019

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2019-01463

Dear Ms. Quinn:

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# 746435 (Ref. No. 19-075).

The Cedar Park Police Department (the "department") received a request for information, including 9-1-1 audio originating from two specified phone numbers, pertaining to a specified incident. You state you have no information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us 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. 2018-15495 (2018). In that ruling, we determined, in part, the department must withhold certain information under section 552.101 of the Government Code 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, the department must continue to rely on

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Open Records Letter No. 2018-15495 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, we will address the department's arguments against disclosure for information not previously ruled upon.

Section 552.101 of the Government Code excepts "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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the requestor knows both the identity of the individual involved and the nature of the incident. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must continue to rely on Open Records Letter No. 2018-15495 as a previous determination and withhold the identical information in accordance with that ruling. The department must withhold the remaining 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 "Lecelle Clarke". The signature is fluid and cursive, with the first name being more prominent.

Lecelle Clarke
Attorney
Open Records Division

LC/eb

Ref: ID# 746435

Enc. Submitted documents

c: Requestor
(w/o enclosures)