



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2019

Mr. Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
P. O. Box 12159
Austin, Texas 78711

OR2019-18082

Dear Mr. Bowman:

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# 770939 (ORR No. 20194299).

The Texas Department of Licensing and Regulation (the "department") received information pertaining to a specified case. The department states it has released some information. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code.¹ We have considered the exceptions the department claims and reviewed the submitted information.

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. In Open Records

¹Although the department does not raise section 552.137 of the Government Code in its brief, we understand the department to raise this exception based on its markings.

Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information).

Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find the department has not demonstrated a portion of the information it has marked is highly intimate or embarrassing and not of legitimate public concern. This information, which we have marked for release, may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, with the exception of the information we have marked for release, the department must withhold the information it has marked and we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses you have marked and we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

We note some of the remaining information may be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, with the exception of the information we have marked for release, the department must withhold the information it has marked and we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the personal e-mail addresses you have marked and we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The department must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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 'Michelle Garza', with a large, stylized flourish at the end.

Michelle Garza
Assistant Attorney General
Open Records Division

MG/jxd

Ref: ID# 770939

Enc. Submitted documents

c: Requestor
(w/o enclosures)