



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 12, 2019

Mr. Scott A. Say
Lamb County & District Attorney
Office of the County & District Attorney
100 6th Drive, Room 111
Littlefield, Texas 79339

OR2019-22193

Dear Mr. Say

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# 779911.

The Lamb County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident. The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

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 and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the

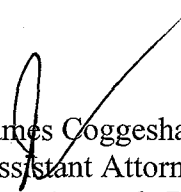
¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested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

individual's privacy. The requestor represents one of the individuals whose information is at issue. Thus, the requestor has a right of access to that individual's private information pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Nevertheless, we find some of the remaining information, which pertains to a different individual, is highly intimate or embarrassing and not of legitimate concern to the public. We believe withholding only the identifying information of the other individual or certain details of the report from this requestor would not preserve the other individual's common-law right to privacy. Thus, the requestor's right to his client's private information under section 552.023 does not overcome the other individual's privacy right in the same information. Accordingly, to protect the privacy of the other individual, 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.²

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James Coggeshall
Assistant Attorney General
Open Records Division

JLC/be

Ref: ID# 779911

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address the other arguments of the district attorney's office to withhold this information.