



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2019

Mr. Jonathan Miles
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2019-30378

Dear Mr. Miles:

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# 790984 (HHSC Ref. No. 19294).

The Texas Health and Human Services Commission (the "commission") received a request for seventeen categories of information pertaining to applications for early termination of registration by the Texas Council on Sex Offender Treatment (the "council"). You state you have no information responsive to some categories of the request.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the

¹ The 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).

Government Code.² We have considered the exception you claim and reviewed the submitted representative sample of information.³

Initially, we note some of the submitted information is not responsive to the request for information because it was created after the request for information was received.⁴ This ruling does not address the public availability of any information that is not responsive to the request, and the commission need not release such information in response to this request.

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. This section encompasses information protected by other statutes, such as section 110.162 of the Occupations Code, which states:

The council and the staff and consultants employed by the council shall keep confidential any record relating to the identity, examination, diagnosis, prognosis, or treatment of a sex offender.

Occ. Code § 110.162; *see also id.* § 110.001(6) (defining “sex offender” for purposes of Occupations Code chapter 110). You state the information at issue was provided to the council to perform individual risk assessments for sex offenders who applied to be removed from the Texas Department of Public Safety’s Public Sex Offender Registration website. You assert the information relates to the identity, examination, diagnosis, prognosis, and treatment of the sex offenders at issue. Based on these representations and our review, we find the commission must withhold the responsive information under section 552.101 in conjunction with section 110.162 of the Occupations Code.⁵

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

² We note, and you acknowledge, the commission did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov’t Code § 552.301(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.

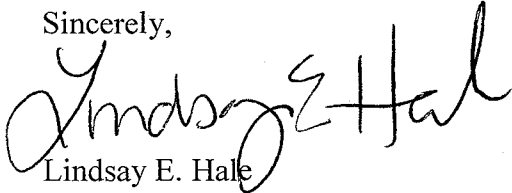
³ We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

⁴ As noted above, the Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Bustamante*, 562 S.W.2d 266; ORDs 605 at 2, 555 at 1, 452 at 3, 362 at 2.

⁵ As our ruling is dispositive, we do not address your remaining arguments to withhold this information.

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,

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

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LH/eb

Ref: ID# 790984

Enc. Submitted documents

c: Requestor
(w/o enclosures)