



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 4, 2019

Ms. Bhavani Madiseti-Vemireddy
Assistant County Attorney
Williamson County
405 Martin Luther King Street, #7
Georgetown, Texas 78626

OR2019-30973

Dear Ms. Madiseti-Vemireddy:

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# 795044 (ORR# 2019-411-PIA).

Williamson County (the "county") received a request for information pertaining to a specified location during a specified time period. You state you will release some information to the requestor. 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.

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 of the Government Code encompasses section 576.005 of the Health and Safety Code which provides that "[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law." Health & Safety Code § 576.005. You state

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).

the location at issue is a mental health facility as defined by chapter 571. *See id.* § 571.003(12). Upon our review, we find you have failed to demonstrate the submitted information consists of records of a mental health facility. Therefore, the county may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code.

Section 552.101 also 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*, including information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See Indus. Found.*, 540 S.W.2d at 683. *Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455 (1987).*

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that 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. Although it appears you assert the submitted information is subject to common-law privacy in its entirety, there is no indication that the requestor knows the identities of the individuals whose privacy interests are implicated. Accordingly, the submitted information may not be withheld in its entirety under common-law privacy. However, we agree the submitted information contains information that meets the standard articulated in *Industrial Foundation*. Accordingly, the county must withhold the information we marked under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is information pertaining to an identifiable individual and is highly intimate or embarrassing and not of legitimate public interest, therefore; the county may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. As no further exceptions to disclosure are raised, the county must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "Pearlie Gault", with a long horizontal flourish extending to the right.

Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 795044

Enc. Submitted documents

c: Requestor
(w/o enclosures)