



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 18, 2020

Mr. Grant D. Blaies  
Counsel for Johnson County  
Blaies & Hightower, L.L.P.  
420 Throckmorton Street, Suite 1200  
Fort Worth, Texas 76102

OR2020-04934

Dear Mr. Blaies:

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# 812225.

Johnson County (the "county"), which you represent, received a request for information pertaining to a specified county auditor's letter. You state the county does not have information responsive to portions of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which is a representative sample.<sup>2</sup>

Initially, we note the submitted information consists of court-filed documents. Section 552.022 of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). You seek to

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<sup>1</sup> 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).

<sup>2</sup> 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 that those records contain substantially different types of information than that submitted to this office.

withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.103 of the Government Code. We note common-law privacy is not applicable to information contained in public records. See *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the court-filed documents may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. We also note section 552.103 is discretionary in nature and does not make information confidential under the Act. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); see also Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the submitted information may not be withheld under section 552.103 of the Government Code. However, we will address your remaining argument against disclosure of the submitted information.

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. This section encompasses section 261.201 of the Family Code, which provides, in pertinent part, as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert some of the submitted information is subject to chapter 261 of the Family Code. Upon review, however, we find you have failed to demonstrate the information at issue is a report of child abuse or neglect or was used or developed in an investigation under chapter 261. See *id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). Therefore, we conclude section 261.201 is not applicable to any portion of the submitted information, and it may not be withheld on that basis. The county must release the submitted 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 that reads "D. Michelle Case". The signature is written in a cursive style with a long horizontal flourish extending to the right.

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/jxd

Ref: ID# 812225

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)