



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 10, 2020

Mr. Tommy L. Coleman
Assistant District Attorney
Polk Criminal District Attorney's Office
101 West Mill Street, Suite 247
Livingston, Texas 77351

OR2020-07466

Dear Mr. Coleman:

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# 815903.

Polk County (the "county") received a request for information pertaining to a named individual. You claim the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). The submitted information may not be subject to the Act if it is maintained solely by the Polk County Court at Law (the "court") and thus, consists of records of the judiciary. Therefore, the Act neither authorizes information held by the judiciary to be withheld nor requires that it be disclosed. *See* Open Records Decision No. 25 (1974). Accordingly, to the extent the submitted information is maintained solely by the court, it is not subject to release under the Act and need not be released in response to the present request. *See* Gov't Code § 552.0035 (access to information maintained by or for judiciary is governed by rules adopted by supreme court); Tex. R. Jud. Admin. 12 (public access to judicial records). However, to the extent the submitted information or copies of the submitted information are also maintained by the county, the submitted information is subject to the Act, and we will consider whether it is excepted from disclosure.

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 *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find you have failed to demonstrate the information you seek to withhold is highly intimate or embarrassing information and of no legitimate public interest. Therefore, the county may not withhold the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the submitted information is maintained solely by the court, it is not subject to release under the Act and need not be released in response to the present request. To the extent the submitted information or copies of the submitted information are also maintained by the county, 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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/be

Ref: ID# 815903

Enc. Submitted documents

c: Requestor
(w/o enclosures)