



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 26, 2020

Mr. Jordan M. Powell
Assistant General Counsel
Hays County
111 East San Antonio Street, Suite 202
San Marcos, Texas 78666

OR2020-16635

Dear Mr. Powell:

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# 833922.

The Hays County Office of General Counsel (the "county") received a request for the personnel file of a named individual and information pertaining to a specified investigation involving the named individual.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of some of the information at issue may implicate the interests of the Texas Juvenile Justice Department (the "department"). Accordingly, you state, and provide documentation demonstrating, the county notified the department of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released.² *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

¹ You state, and provide documentation demonstrating, the county sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² As of the date of this letter, this office has not received comments from the department explaining why any of the submitted information should not be released.

Initially, we note you have only submitted information responsive to the portion of the request seeking information pertaining to the incident specified in the request. Additionally, you do not inform us the county has released any personnel information pertaining to the individual named in the request. Although you state the county has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information the county has submitted for our review. This ruling does not authorize the county to withhold any information that is substantially different from the types of information it submitted to this office. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to the remainder of the request existed on the date the county received the present request for information, we assume the county has released it to the requestor. If the county has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 information made confidential by other statutes, including section 418.182 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Section 418.182 provides, in pertinent part:

(a) [I]nformation . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact information may be related to a security system does not make such information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting section 418.182 must adequately explain how the responsive records fall within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the information submitted as Exhibit B consists of surveillance camera video recordings from the Hays County Juvenile Detention Center (the “center”). You also state the recordings at issue are from a surveillance camera that is part of the county's security system, which is “utilized to monitor the overall movements and actions of the detainees and law enforcement officers in the [center] in an effort to protect those individuals and the [center] from an act of terrorism or related criminal activity.” You further state release of the recordings at issue would reveal “the exact placement of cameras and the angles to which they point, identif[y] any vulnerabilities in the system, depict[] video quality or lack

thereof, and depict[] the detailed movements and operations of law enforcement officers within the [center].” Based on your representations and our review, we find the submitted surveillance video recordings relate to the location and specifications of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep’t of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included cameras’ capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Accordingly, the county must withhold the submitted surveillance video recordings under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.

Section 552.101 of the Government Code 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*. *Id.* at 683. This office has held common-law privacy protects the identity of a juvenile offender. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.008(b).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, some of the information at issue contains the identifying information of an individual who may have been a juvenile offender. However, because the information at issue does not reflect the age of this individual, we must rule conditionally. Accordingly, to the extent the information we marked pertains to an offender ten years of age or older and under seventeen years of age at the time of the alleged conduct, the county must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, to the extent the information at issue does not identify an offender who was ten years of age or older and under seventeen years of age at the time of the alleged conduct, the county may not withhold this information on that basis.

In summary, the county must withhold the submitted surveillance video recordings under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code. To the extent the information we marked pertains to an offender ten years of age or older and under seventeen years of age at the time of the alleged conduct, the county must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The county must release the remaining information.³

³ We note the requestor has a special right of access to his client’s social security number being released in this instance. *See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 833922

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)

theories not implicated when individuals request information concerning themselves). If the county receives another request for this information from a different requestor, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).