



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 27, 2020

Ms. Jennifer Slack  
Assistant District Attorney  
Lubbock County  
P.O. Box 10536  
Lubbock, Texas 79408

OR2020-26965

Dear Ms. Slack:

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# 848296 (Ref. No. ORR 2151).

Lubbock County (the "county") received a request for e-mails sent from a named individual to particular entities during a stated period of time, as well as a particular letter sent to the county involving the named individual. You claim some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.111, 552.114, 552.117, 552.130, 552.136, 552.137, 552.139, and 552.147 of the Government Code.<sup>1</sup> Additionally, you state release of the information at issue may implicate the interests of the individual named in the present request, whom you notified of the request.<sup>2</sup> *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered your arguments and reviewed the submitted information.

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<sup>1</sup> Although you also raise section 552.024 of the Government Code, we note this section is not an exception to disclosure. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024.

<sup>2</sup> As of the date of this letter, this office has not received comments from the named individual explaining why any of the submitted information should not be released.

Initially, you state some of the submitted information, which you marked, is not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request and the county is not required to release such information in response to the present request.

Next, you note, and we agree, some of the information at issue was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2020-26496 (2020). In that ruling, we determined, in pertinent part, that the county may continue to rely on Open Records Letter No. 2020-25113 as a previous determination and withhold certain information in accordance with that ruling. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Thus, the county may continue to rely on Open Records Letter No. 2020-26496 as a previous determination and withhold the information you indicated in accordance with that ruling.<sup>3</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not 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 some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the county may not withhold any portion of the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the county may continue to rely on Open Records Letter No. 2020-26496 as a previous determination and withhold the information you indicated in accordance with that ruling. The county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county must release the remaining responsive information.

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<sup>3</sup> As we are able to make this determination, we need not address your arguments against disclosure of this 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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/gw

Ref: ID# 848296

Enc. Submitted documents

c: Requestor  
(w/o enclosures)