



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2022

Ms. Serena Greene
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2022-00546

Dear Ms. Greene:

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# 923782 (OGC# AH0157).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to specified types of allegations and information pertaining to a specified federal law. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

Initially, you assert some of the submitted information is not subject to the Act pursuant to section 552.002(d) of the Government Code, which provides:

"Protected health information" as defined by Section 181.006, Health and Safety Code, is not public information and is not subject to disclosure under this chapter.

Gov't Code § 552.002(d). Section 181.006 of the Health and Safety Code provides, in relevant part:

¹ 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 those records contain substantially different types of information than that submitted to this office.

[F]or a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity[.]

Health & Safety Code § 181.006(1). Section 181.001(b)(2)(A) defines "covered entity," in part, as any person who:

for commercial, financial or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2)(A). You do not assert the department is a covered entity. Thus, we find you have failed to demonstrate the applicability of section 181.006 of the Health and Safety Code. Consequently, we find the information at issue is subject to the Act, and the department must release it unless it falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302.

Section 552.134(a) of the Government Code relates to inmates of the department and provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Id. § 552.134(a). Section 552.134 is explicitly made subject to section 552.029 of the Government Code, which provides, in relevant part:

Notwithstanding Section . . . 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021 [of the Government Code]:

. . .

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(8). Upon review, we agree the submitted information constitutes information about inmates for purposes of section 552.134. We note, however, the information at issue pertains to alleged crimes involving inmates. Thus, pursuant to section 552.029(8), the department must release basic information concerning the alleged crimes involving the inmates. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Accordingly, with the exception of the basic information, the department must withhold the submitted information pursuant to section 552.134 of the Government Code.

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, such as section 501.008 of the Government Code, which provides, in relevant part:

(c) A report, investigation, or supporting document prepared by the department in response to an inmate grievance is considered to have been prepared in anticipation of litigation and is confidential, privileged, and not subject to discovery by the inmate in a claim arising out of the same operative facts as are alleged in the grievance.

Id. § 501.008(c). The department claims the basic information is confidential under section 501.008(c). However, we find the department has failed to demonstrate the basic information consists of a report, investigation, or supporting document prepared by the department for purposes of section 501.008(c). *See id.* Thus, the department may not withhold any portion of the basic information under section 552.101 of the Government Code in conjunction with section 501.008(c) of the Government Code.

You seek to withhold a portion of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy. 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. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find the basic information contains identifying information of sexual assault victims. Accordingly, the department must withhold the information you indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the basic information, which must generally be released pursuant to section 552.029 of the Government Code, the department must withhold the submitted information under section 552.134 of the Government Code. In releasing the basic information, the department must withhold the information you indicated under section 552.101 of the Government Code in conjunction with common-law privacy.²

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/jm

Ref: ID# 923782

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² Although the requestor is a representative of the Texas Office of Capital & Forensic Writs, she does not indicate she has a right of access to the submitted information under state or federal law. *See* Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986).