



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 12, 2022

Ms. June B. Harden
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2022-24051

Dear Ms. Harden:

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# 965843 (PIR No. R012697).

The Office of the Attorney General (the "OAG") received a request for complaints, investigations, and enforcement actions pertaining to nine named facilities during a stated time period. The OAG states it will release some responsive information. The OAG also states it will withhold information pursuant to Open Records Letter No. 2012-08540 (2012).¹ The OAG claims portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.²

¹ In Open Records Letter No. 2012-08540 this office issued the OAG a previous determination authorizing it to withhold information it compiles in connection with a Medicaid fraud investigation under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code without the need of requesting a ruling from this office when requests for such information are not made by individuals or entities who are authorized to obtain such information under chapter 531 of the Government Code.

² 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.

Section 552.101 of the Government Code excepts from public 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 the information the OAG marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the OAG must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy. The OAG must release the remaining 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 965843

Enc. Submitted documents

c: Requestor
(w/o enclosures)