



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2022

Ms. Ashley Crutchfield
Staff Attorney
Texas Funeral Service Commission
333 Guadalupe Street, Suite 2-110
Austin, Texas 78701

OR2022-29288

Dear Ms. Crutchfield:

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# 973706.

The Texas Funeral Service Commission (the "commission") received a request for information pertaining to a specified complaint. You state some of the requested information does not exist.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. In addition, you state you notified certain interested parties of the request for information of the right to submit comments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (providing that 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 representative sample of information.²

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

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the department. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

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.

Code § 552.101. This exception encompasses section 651.2035(a) of the Occupations Code, which provides as follows:

Except as provided by Subsection (b), a complaint and investigation and all information and materials compiled by the commission in connection with the complaint and investigation are not subject to:

- (1) disclosure under [the Act]; or
- (2) disclosure, discovery, subpoena, or other means of legal compulsion for release of information to any person.

Occ. Code § 651.2035(a). Section 651.2035 only applies to information created or compiled by the commission as part of an investigation by the commission. We understand the commission created or compiled the information at issue. The commission states, and we agree, the requestor is not entitled to receive this information under section 651.2035(b) of the Occupations Code. Therefore, the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 651.2035 of the Occupations Code.

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

DMH/jm

Ref: ID# 973706

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)

