



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2022

Ms. Susan Camp-Lee
Sheets & Crossfield, P.L.L.C.
Counsel for City of Round Rock
309 East Main Street
Round Rock, Texas 78664

OR2022-38136

Dear Ms. Camp-Lee:

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# 988853 (ORR W017027).

The City of Round Rock (the "city"), which you represent, received a request for information pertaining to the requestor being in jail. You state you are releasing some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address that article 15.26 of the Code of Criminal Procedure. Article 15.26 of the Code of Criminal Procedure provides, in relevant part, the following:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours.

Crim Proc. Code art. 15.26. Thus, we interpret article 15.26 of the Code of Criminal Procedure to apply only to court clerks. Therefore, we find article 15.26 does not make the arrest warrant maintained by the city expressly public. Accordingly, we will address your arguments against disclosure of the submitted information.

Next, we note, the submitted information contains court-filed documents that are subject to section 552.022(a)(17) of the Government Code, which provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy, we note common-law privacy is not applicable to information contained in public court records. *See Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App— Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication); *see also Cox Broad. Corp. v. Cohn*, 420 U.S. 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the city may not withhold the court-filed document, which we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we will consider your arguments for the information not subject to section 552.022 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 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 demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the submitted information is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, an entire report must be withheld to protect the individual's privacy. In this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, the city must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.¹

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, the city must release the marked court-filed document pursuant to section 552.022(a)(17). The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law 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,

Melanie Villars
Assistant Attorney General
Open Records Division

MJV/eb

Ref: ID# 988853

Enc. Submitted documents

c: Requestor
(w/o enclosures)