



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2014

Ms. Lisa Calem-Lindström
Public Information Coordinator
Texas Facilities Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2014-07369

Dear Ms. Calem-Lindström:

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# 521670.

The Texas Facilities Commission (the "commission") received a request for (1) all documents related to the elevator problems at the William P. Hobby, Jr., building (the "Hobby building") and (2) the security plans for the Governor's Mansion. You state the commission does not have information responsive to the second category of the request.¹ You state you have released some of the information to the requestor. 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, you state the submitted information is non-responsive to the present request. However, we note the submitted information consists of an email that refers to the elevator problems at the Hobby building. Therefore, we find the submitted information is responsive to the instant request, and we will address your argument against its disclosure.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *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 Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 of the Government Code 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 we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the commission has failed to demonstrate the remaining information at issue is highly intimate or embarrassing and of no legitimate public concern. Therefore, the commission may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions against disclosure, the remaining information must be released.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 521670

Enc. Submitted documents

c: Requestor
(w/o enclosures)