



January 23, 2015

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767-1748

OR2015-01352

Dear Ms. Winn:

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# 552834.

The Travis County District Attorney's Office (the "district attorney's office") received two requests from the same requestor for offense reports, TDC summaries, and Pre-Sentence Investigation Reports for seven specified cases. You state the district attorney's office will release the offense reports. You state the district attorney's office does not possess the specified TDC summaries.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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).

²We 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.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant requests because it is not an offense report, TDC summary, or Pre-Sentence Investigation Report for the seven specified reports. This ruling does not address the public availability of any information that is not responsive to the requests and the district attorney's office is not required to release such information in response to these requests.

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 protected by other statutes, such as article 42.12 of the Code of Criminal Procedure. Section 9 of article 42.12 is applicable to pre-sentence investigation and post-sentence reports and provides, in part:

(j) The judge by order may direct that any information and records that are not privileged and that are relevant to a report required by Subsection (a) or Subsection (k) of this section be released to an officer conducting a presentence investigation under Subsection (i) of this section or a postsentence report under Subsection (k) of this section. The judge may also issue a subpoena to obtain that information. A report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only:

- (1) to those persons and under those circumstances authorized under Subsections (d), (e), (f), (h), (k), and (l) of this section;
- (2) pursuant to Section 614.017, Health and Safety Code; or
- (3) as directed by the judge for the effective supervision of the defendant.

Crim. Proc. Code art. 42.12, § 9(j). You state the submitted responsive information consists of pre-sentence investigation reports. Additionally, you state none of the release provisions in section 9(j) of article 42.12 are applicable. Accordingly, we conclude the district attorney's office must withhold the submitted responsive information under section 552.101 of the Government Code in conjunction with section 9(j) of article 42.12 of the Code of Criminal Procedure.³

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.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 552834

Enc. Submitted documents

c: Requestor
(w/o enclosures)