



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2015

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Mr. Brett Norbraten
Open Records Attorney
Texas Department of Aging and Disability Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2015-08678

Dear Mr. Norbraten:

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# 562517 (DADS# 2015SOLEG0024).

The Texas Department of Aging and Disability Services (the "department") received a request for plat maps for specified cemeteries and burial lists related to the maps. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note the requestor contends portions of the requested information were previously released to the public and are now in the public domain. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). The

requestor asserts information pertaining to the burial lists is available at the cemeteries. The requestor further asserts a partial burial list for one of the cemeteries is available on a genealogical website. Section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. We note the submitted information is not the exact information that may have been previously released. Further, we note the department claims the information is excepted from disclosure pursuant to section 552.101 of the Government Code, which makes information confidential by law for purposes of section 552.007. *See Gov't Code § 552.101; see also Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions)*. Therefore, we will consider the department's argument for the submitted information.

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 encompasses section 595.001 of the Health and Safety Code, which provides:

Records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to an intellectual disability are confidential and may be disclosed only for the purposes and under the circumstances authorized by this chapter, subject to applicable federal and other state law.

See Act of March 30, 2015, 84th Leg., R.S., S.B. 219, § 3.1469 (to be codified as an amendment to Health & Safety Code § 595.001) (effective immediately). You assert the submitted information pertains to the identity, diagnosis, evaluation, or treatment of clients of state supported living centers, which constitute intellectual disability programs in the State of Texas. The department asserts the submitted information pertains to clients of state supported living centers. The department also asserts the disclosure provisions are inapplicable here. However, upon review of the submitted information, we find that it is not the type of information that is confidential under section 595.001 of the Health and Safety Code. Therefore, none of the submitted information is confidential under section 595.001 of the Health and Safety Code and the department may not withhold it under section 552.101 on that ground. As you raise no other exceptions to disclosure, the submitted 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,

A handwritten signature in black ink, appearing to read "Paige Thompson", written in a cursive style.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 562517

Enc. Submitted documents

c: Requestor
(w/o enclosures)

JUL 29 2016 ^{am}

At 11:53 A.M.
Velva L. Price, District Clerk

D-1-GN-15-002094

**TEXAS DEPARTMENT OF
AGING AND DISABILITY
SERVICES,**

Plaintiff,

v.

**KEN PAXTON, ATTORNEY
GENERAL OF TEXAS,**

Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201ST JUDICIAL DISTRICT

FINAL JUDGMENT NUNC PRO TUNC

On April 27, 2016, the Court granted the Cross-Motion for Summary Judgment of Plaintiff, the Texas Department of Aging and Disability Services, which resolves all claims and causes of action between Plaintiff and Defendant, Ken Paxton, the Attorney General of Texas.

The Court hereby **RENDERS** judgment for Plaintiff.

All relief sought by any party to this suit and not granted herein is **DENIED**.

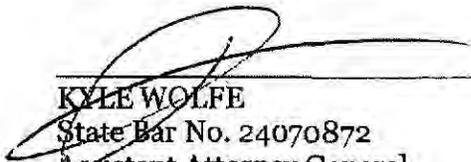
This **FINAL JUDGMENT** disposes of all claims and all parties, and is appealable.

SIGNED on July 29, 2016.



JUDGE PRESIDING

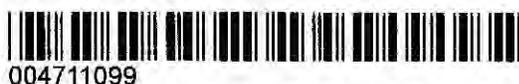
APPROVED AS TO FORM:



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