



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2015

Mr. Caleb Thornton
Assistant County Attorney
County of Montgomery
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2015-09582

Dear Mr. Thornton:

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# 563868 (County File No. 15PIA130).

The Montgomery County District Clerk's Office (the "district clerk's office") received a request for nine categories information pertaining to the requestor's client. You state the district clerk's office will release most of the requested information. You state the district clerk's office does not have information responsive to one of the requested categories of information.¹ 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.

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

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986).

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 a pre-sentence investigation report. Additionally, you indicate none of the release provisions in section 9(j) of article 42.12 are applicable. Accordingly, we conclude the district clerk's office must withhold the submitted 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.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/cbz

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Enc. Submitted documents

c: Requestor
(w/o enclosures)