



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2015

Ms. Diana Spiller
Public Information Coordinator
Texas Commission on Jail Standards
P.O. Box 12985
Austin, Texas 78711

OR2015-12916

Dear Ms. Spiller:

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# 569106.

The Texas Commission on Jail Standards (the "commission") received a request for information pertaining to a specified complaint, a specified investigation, and data on female inmates. The commission states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, the commission informs us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-07861 (2015). In Open Records Letter No. 2015-07861, we determined the commission must withhold some information under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.137 of the Government Code, but must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the commission must continue to rely on Open Records Letter No. 2015-07861 as a previous

determination and withhold or release the identical information in accordance with that ruling.¹

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 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 some of the submitted information in Exhibit A, which we have marked, and all of Exhibit B satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the commission must withhold the information we have marked in Exhibit A and Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the commission may not withhold it under section 552.101 on that ground.

To conclude, the commission must continue to rely on Open Records Letter No. 2015-07861 as a previous determination and withhold or release the identical information in accordance with that ruling. The commission must withhold the information we have marked in Exhibit A and Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The commission must release the remaining information.²

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.

¹See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

²We note the submitted information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 569106

Enc. Submitted documents

c: Requestor
(w/o enclosures)