



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2015

Ms. Ann-Marie Sheely
Assistant County Attorney
County of Travis
P. O. Box 1748
Austin, Texas 78767

OR2015-21389

Dear Ms. Sheely:

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# 582879.

The Travis County District Attorney's Office (the "district attorney's office") received a request for offense reports, "TDC" summaries, and pre-sentence investigation reports for three specified cases pertaining to a named individual. You state you will release the offense reports for all cases. You also state there are no responsive pre-sentence investigation reports for two of the specified cases.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.

Initially, we note you have not submitted any of the requested "TDC" summaries. Thus, to the extent such information existed and was maintained by the district attorney's office on the date the district attorney's office received the request for information, we presume the district attorney's office has released it. If not, the district attorney's office must do so at this

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).

time. *See* Gov't Code §§ 552.201, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release the information as soon as possible).

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 information consists of a pre-sentence investigation report. Additionally, you state none of the release provisions in section 9(j) of article 42.12 are applicable in this instance. Accordingly, we conclude the district attorney'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,

A handwritten signature in cursive script that reads "Nicole Thomas".

Nicole Thomas
Assistant Attorney General
Open Records Division

NT/eb

Ref: ID# 582879

Enc. Submitted documents

c: Requestor
(w/o enclosures)