



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 16, 2016

Ms. Jessica Marsh  
General Counsel  
Texas Civil Commitment Office  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2016-11222

Dear Ms. Marsh:

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# 610445 (Request No. PIA 2016-0004).

The Texas Civil Commitment Office (the "TCCO") received a request for twelve categories of information pertaining to the requestor and the Civil Commitment Program. You state you have released some information to the requestor in response to this request. Additionally, you state the TCCO previously released some of the requested information in response to a prior request for information. *See Gov't Code § 552.232* (prescribing procedures for response to repetitious or redundant requests for information). You also state you do not possess some of the requested information.<sup>1</sup> 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 the requestor has asked the TCCO to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See Open Records Decision Nos. 563 at 8*

---

<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), *563 at 8* (1990), *555 at 1-2* (1990), *452 at 3* (1986), *362 at 2* (1983).

(1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the TCCO has made a good faith effort to do so.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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 demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

The submitted information consists of indictments pertaining to sexual assaults. In Open Records Decision No. 393 (1983), this office concluded that, generally, only information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The requestor in this case knows the identities of the alleged victims at issue in the submitted information. Accordingly, we believe withholding only identifying information from the requestor would not preserve the victims’ common-law right to privacy. Therefore, the TCCO must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup>

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](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

---

<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

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 "Kavid Singh".

Kavid Singh  
Assistant Attorney General  
Open Records Division

KVS/som

Ref: ID# 610445

Enc. Submitted documents

c: Requestor  
(w/o enclosures)