



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 1, 1997

Mr. Claud H. Drinnen
First Assistant City Attorney
City of Amarillo
Legal Department
P.O. Box 1971
Amarillo, Texas 79105-1971

OR97-0668

Dear Mr. Drinnen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 105521.

The Amarillo Police Department (the "department"), which you represent, received a request for "any information, reports, supplemental reports, interviews, summaries, investigative notes and photograph" regarding a named individual and referenced by incident report number 94-1979. You have submitted incident report number 94-1979 as responsive to the request, and you claim that it is excepted from public disclosure by sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information.²

¹In reviewing the submitted information, we observe that the names (including the a/k/a names) of the individual who is the subject of the requested information do not match the name which appears on the front page of the submitted report.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Because the requested material comes within the purview of section 552.108, we conclude that most of the information at issue may be withheld under this section.

We note, however, that information normally found on the front page of an offense report is generally considered public.³ *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We therefore conclude that, except for front page offense report information, section 552.108 of the Government Code excepts the requested information from required public disclosure. You may choose to release all or part of the information at issue that is not otherwise confidential by law. Gov’t Code § 552.007.

As we have concluded that section 552.108 does not except from disclosure the front page offense report information, we must consider your section 552.101 claim. Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. See *id.* The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has previously ruled that, generally, the details of an attempted suicide are protected by common-law privacy. See Open Records Decision No. 422 (1984). However, the right of privacy is personal to an individual and *lapses upon his death*. Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981). Therefore, the department may not protect the front page offense report information from public disclosure by section 552.101 of the Government Code.

³The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/ulg

Ref.: ID# 105521

Enclosures: Submitted documents

cc: Ms. Karen L. Jordan
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(w/o enclosures)

