



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 8, 1997

Mr. Dale A. Rye
Of Counsel to the County Attorney
Williamson County Attorney's Office
405 Martin Luther King Box 3
Georgetown, Texas 78626

OR97-2668

Dear Mr. Rye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 110730.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for several categories of information about incidents involving emotionally disturbed persons or persons with mental disabilities. You state that some of this information has been made available to the requestor. You claim that the remaining information, to the extent that it exists,¹ is excepted from disclosure under sections 552.101 and 552.108 of the Government Code and various confidentiality statutes. Although you have submitted to this office representative samples of the information at issue,² you express concerns about "the breadth of the request" and the amount of "data manipulation" that may be involved in answering the request. We have considered the exceptions you claim and have reviewed the documents at issue.

Because you are concerned about the scope of the request and the task of identifying all of the documents that are responsive to the request, you have asked the requestor "to more carefully

¹You state that the sheriff's office does not have documents that are responsive to items 5, 6, 7, and 11 of the request. In this regard, we note that a governmental body is not required to create or obtain new information in order to comply with a request for information. *Open Records Decision No. 534 (1989)*.

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)*. 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.

define the requested information.” We note that a governmental body must make a good faith effort to relate a request for information to the information which it holds. Open Records Decision No. 561 (1990). However, when a governmental body is presented with a broad or vague request for information rather than a request for specific records, it should advise the requestor of the types of information available so that he may narrow his request. Open Records Decision No. 563 (1990).

You also express concern about the amount of information possibly encompassed by the request and the burden of providing this information to the requestor. In this regard we note that the sheriff's office may be able to require the requestor to post bond for or prepay the costs of responding to the request. *See Gov't Code § 552.263*. We note also that Government Code section 552.221 allows a governmental body a reasonable amount of time to produce requested documents. We have previously ruled that what constitutes a reasonable amount of time depends on the facts in each case, and that the volume of information is highly relevant to what constitutes a reasonable amount of time. *See Open Records Decision No. 467 (1987)*.

The Seventy-fifth Legislature amended section 552.108 of the Government Code to provide in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. You cite section 552.108, but you have not demonstrated that section 552.108 is applicable to the submitted information. *See Gov't Code § 552.301(b)(1)* (governmental body must submit to this office written comments explaining why stated exceptions apply). Therefore, we conclude that the information is not excepted from disclosure under section 552.108 of the Government Code.

Next, you contend that the information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be

confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You claim that the submitted information is deemed confidential by sections 576.005 and 595.001 of the Health and Safety Code. Section 576.005 deems confidential the “[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient.” Health & Safety Code § 576.005(a). Section 595.001 deems confidential “[r]ecords of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to mental retardation.” Health & Safety Code § 595.001. We do not believe that these confidentiality provisions encompass incident reports created and maintained by the sheriff’s office. Therefore, we conclude that the submitted information is not excepted from disclosure under section 552.101 of the Government Code in conjunction with these statutes.

We note, however, that some of the submitted information may be deemed confidential by section 611.002 of the Health and Safety Code. Section 611.002 provides in part:

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.
- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002. It appears from the submitted information that the sheriff’s office routinely sends a special officer for mental health assignment (“special officer”) to deal with situations involving mental health issues. *See* Gov’t Code § 415.051 (certain peace officers who have completed required training may be certified as “special officers for mental health assignment”). Section 611.001 of the Health and Safety Code defines a “professional” as follows:

- (A) a person authorized to practice medicine in any state or nation;
- (B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or
- (C) a person the patient reasonably believes is authorized, licensed, or certified as provided in this subsection.

Health & Safety Code § 611.001(2). Because the definition of a professional considers the patient’s reasonable belief and includes a person who is certified by this state to evaluate mental or emotional conditions, we conclude that communications between a special officer and the individuals they assist, as well as records of the identity and evaluation of these individuals created by the special officer, are deemed confidential by section 611.002(a) of the Health and Safety Code. Such information may only be released in accordance with sections 611.004 or 611.0045 of the Health and Safety Code. We are unable to determine which, if any, portions of the submitted information are confidential under section 611.002(a), because the submitted information does not indicate whether a special officer responded to a particular call or whether the special officer evaluated the individual

for whom assistance was requested. However, we caution the sheriff's office to consider the applicability of section 611.002(a) to the requested information before publicly releasing it.

You also claim that the releasing the submitted information implicates the privacy rights of individuals who experience emotional disturbances or have mental disabilities. Section 552.101 encompasses the common-law right to privacy. The submitted documents contain medical information not covered by a confidentiality statute, yet protected from required public disclosure based on the common-law right to privacy. See *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 is protected by the doctrine of common-law privacy if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. See *id.* This office has determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982). In this case, we believe that withholding information that identifies the individuals requiring mental health services will protect their privacy interests. The following types of information must be withheld: the names, home addresses and telephone numbers, and social security numbers of the individuals requiring mental health services, and the names of persons identified as family members of the individuals requiring mental health services. The sheriff's office must withhold this identifying information from disclosure under section 552.101 in conjunction with the common-law right to privacy. Finally, we note that an individual's common-law and constitutional privacy rights generally lapse upon his death. Attorney General Opinion H-917 (1976) at 3-4; Open Records Decision Nos. 432 (1985) at 3-6, 272 (1981) at 1. Therefore, the sheriff's office should not withhold information that identifies deceased individuals who received mental health services.

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 110730

Enclosures: Submitted documents

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