



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 25, 1998

Ms. Tamara Armstrong  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR98-0529

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112918.

Travis County (the "county") received a request for "a copy of the entire inmate file of Curtis Sprague." You state that you have released many of the documents in the file to the requestor. You contend that the remaining documents are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Initially, we note that, if the requested file contains criminal history information, the county should not release this information to the public. Criminal history information obtained from the National Crime Information Center or the Texas Crime Information Center is generally confidential by law. *See* 28 C.F.R. § 20; Gov't Code § 411.083. Criminal history information that has been compiled by a governmental entity is protected by the common-law right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989).

You claim that the highlighted portions of certain health records are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Having examined the health records, we conclude that the highlighted information is not protected by section 81.046 of the Health and Safety Code, because the records do not appear to be records of a health authority as required by the statute. Health & Safety Code §§ 81.003(2) (defining health authority), 046(a), (b); Open Records

Decision No. 577 (1990) at 2 (section 81.046 applies to information in possession of health authorities).

However, section 552.101, in conjunction with the common-law right to privacy, does protect some of the information in the health records from disclosure. The common-law right to privacy protects from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685. We have marked the information in the health records that is excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy.<sup>1</sup>

Finally, you claim that a visitor log and related information are excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. Section 552.108, the "law enforcement exception," provides:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 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; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An 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 is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

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

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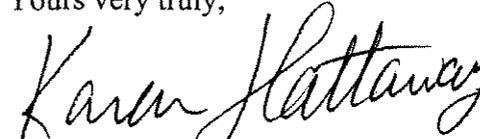
<sup>1</sup>We note that if the requestor represents the individual whose privacy interests are at stake here, the requestor may have a right of access to any information protected by the individual's common-law right to privacy. See Gov't Code § 552.023.

Gov't Code § 552.108. You have not met your burden of demonstrating how section 552.108 applies to the visitor log and related information. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977) (governmental body claiming section 552.108 must reasonably explain, if information does not supply explanation on its face, how and why release of requested information would interfere with law enforcement); Gov't Code § 552.301(b)(1). Therefore, we conclude that section 552.108 of the Government Code does not except this information from disclosure.

The visitor log and related information are, however, excepted from disclosure under section 552.101. In Open Records Decision Nos. 428 (1985) and 430 (1985), we concluded that inmate visitor and mail logs which identify inmates and those who choose to visit or correspond with inmates are protected by constitutional law. Thus, the county must withhold the visitor log and related information from disclosure pursuant to section 552.101 of the Government Code.

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# 112918

Enclosures: Marked documents

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(w/o enclosures)