



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 27, 1998

Mr. Michael Cosentino
Bryan City Attorney
P.O. Box 1000
Bryan, Texas 77805

OR98-1047

Dear Mr. Cosentino:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114572.

The Bryan Police Department (the "department") received a request for the complete investigation file on a shooting death. You assert that the records at issue are protected from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. You submitted representative samples of the records at issue to this office for review.¹

We will address the timeliness of the department's request for information. According to information provided to this office, the requestor sent the department a request for the records at issue by certified mail. That request was properly addressed to: Bryan Police Records Division, P.O. Box 1000, Bryan, Texas, 77805. The return receipt shows that the request was received by the city on January 5, 1998, and signed for by a city employee. There is no dispute that the request was addressed correctly and sent to the appropriate mailing address for open records requests to the department. You explain that the employee who signed for the letter, and whose job apparently includes signing for certified mail delivered at this mailing address, sorts utility bill payments and that "other personnel at the Utilities Department are responsible for forwarding the mail to the appropriate City departments."

Your letter to this office states:

¹We 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 No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We may never know what happened to Mr. Broussard's original Request For Information dated December 30, 1997 on its journey between [the] mailroom at the Utilities Building and the Records Division at the City of Bryan Police Department building, its intended destination. We do know that the custodian of records for the Bryan Police never received it.

You also submitted to this office an affidavit from the records custodian for the department, stating that she only learned of the request when the requestor called her in February and asked about his request. On February 4, 1998, the requestor provided the department a copy of the original request for information.

Although the department may never discover at which point in the internal mail processing system the original request was misplaced, it is apparent that the request was properly directed to the department's custodian of records and was delivered to the department's mailing address. It was the department's agents for receipt of open records requests who lost the document in question. Since the request for records was actually received by the department's agents on January 5, 1998, the city's February 6, 1998 request for a decision is not made timely. *See* Gov't Code § 552.308. The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public.² *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

You assert that there is a compelling reason to withhold some pages of the submitted information. You assert that the common-law privacy aspect of section 552.101 protects some of the information from disclosure. 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 constitutional or common-law privacy and under certain circumstances excepts from disclosure private facts about individuals. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be

²We note that you submitted to this office an autopsy report. Section 11 of article 49.25 of the Texas Code of Criminal Procedure provides that autopsy reports, including the full report and detailed findings of an autopsy, are public records that must be disclosed. *See* Open Records Decision No. 529 (1989) at 4.

withheld from public disclosure under a common-law right of privacy when the information is (1) 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; Open Records Decision No. 611 (1992) at 1.

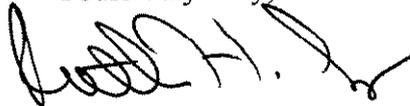
The type of information the supreme court considered intimate and embarrassing in *Industrial Foundation* included information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. In Open Records Decision No. 262 (1980), this office stated that information about a patient's injury or illness might be protected under common-law privacy if such injury or illness relates to drug overdoses, acute alcohol intoxication, gynecological or obstetrical illnesses, convulsions and seizures, or emotional and mental distress. *See also* Open Records Decision No. 539 (1990) at 5 (information concerning emotional state may be protected by common-law privacy).

However, an individual's right of common-law privacy is a personal right that does not extend past that individual's own death. Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981) at 1. Thus, a common-law right of privacy would not generally protect records of an individual who is deceased. As the victim in this situation is deceased, common-law privacy will not except from disclosure the circumstances of her death.

You assert the common-law privacy interests of other third parties, including witnesses who provided information during this investigation. We note that there is generally a public interest in the details of a police investigation into a possibly suspicious death. Thus, the information at issue is not protected from disclosure.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 114572

Enclosures: Submitted documents

cc: Mr. Joe A. Broussard, III
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(w/o enclosures)