



April 25, 2002

Mr. Burk Roberts
Roberts & Roberts, L.L.P
P.O. Box P
Killeen, Texas 76540

OR2002-2134

Dear Mr. Roberts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161846.

The Harker Heights Police Department (the "department"), which you represent, received a request for suicide reports made by investigating officers in 2001, and statistics on the number of attempted and successful suicides in the area. As responsive to this request you have submitted incident reports concerning ten attempted suicides. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. As you make no reference to the request for statistics, we assume that you have released the statistics to the extent that they exist. If the department has no such statistics, the Public Information does not require the department to compile them or to create a new document in response to this request. *See* Open Records Decision No. 452 (1986). We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that one of the submitted incident reports appears to be confidential by law. 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 confidentiality statutes such as section 58.007 of the Family Code, which makes certain juvenile law enforcement records confidential. Family Code section 51.04(a) states that the Juvenile Justice Code, Title 3 of the Family Code, "covers the proceedings in all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a person who was a child within the meaning of [Title 3] at the time he engaged in the conduct." Thus, section 58.007 deems confidential law enforcement records from all cases involving a child engaging in delinquent conduct or conduct indicating the need for supervision. After reviewing the submitted information, we conclude that incident report 10-00089 constitutes the type of record that section 58.007 covers. Thus, incident report 10-00089 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

As for the other submitted information, you claim that it is excepted from disclosure by section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You inform us that the department investigates all attempted suicide incidents to determine whether criminal activity, such as murder or assisting suicide, has occurred. Furthermore, you state that "the information relates only to an investigation which has not resulted in a conviction or deferred adjudication." Based on your representations, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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); *see also* Open Records Decision No. 127 at 4 (1976) (summarizing basic information that must be released from offense report). Basic information includes the identity and description of the complainant and the location of the offense. *Houston Chronicle*, 531 S.W.2d at 187.

However, as noted above, these reports concern suicide attempts. In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683 (Tex. 1976), the Texas Supreme Court held that information relating to attempted suicide is private. Section 552.101 of the Government Code incorporates the common law right to privacy. *See id.*; Gov't Code § 552.101. Here, because the requestor knows that the information relates to attempted suicides, we must protect the identities of the individuals who have attempted suicide. You must therefore withhold under section 552.101 and common law privacy any basic information that tends to identify the individuals who attempted suicide. You must release all remaining basic information.

In summary, the department must withhold incident report 10-00089 in its entirety. The other incident reports may be withheld under section 552.108(a)(2); however, the department must release basic information unless it tends to identify the individuals who attempted suicide.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 161846

Enc. Marked documents

c: Mr. Mike Halligan
Texas Mental Health Consumers
7701 Lamar, Suite 500
Austin, Texas 78752
(w/o enclosures)