



April 26, 2002

Mr. J. David Dodd III
Nichols, Jackson, Dillard, Hager & Smith
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2002-2153

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161904.

The City of Allen (the "city"), which you represent, received a request for information regarding suicides and attempted suicides for the year 2001, as well as statistics on the number of attempted and completed suicides in the area. You state that the documents you have submitted for our review are an accurate representative sample of the type of reports that the requestor is seeking. We note that you have not submitted any information responsive to the portion of the request concerning completed suicides. You have also not submitted any information responsive to the request for statistics on the number of attempted and completed suicides in the area, nor have you raised any exceptions to the disclosure of this information. Therefore, we assume that, to the extent this information exists, it has been released to the requestor. If not, you must do so immediately. *See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). Otherwise, the Public Information Act does not require the city to compile statistics or create a new document in response to this request. See Open Records Decision No. 452 (1986). You claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹*

¹ We 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.

Section 552.108(b) of the Government Code provides in pertinent part that 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 disclosure if “the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(b)(2). Section 552.108(b)(2) protects records pertaining to a criminal investigation or prosecution that concluded in a final result other than conviction or a deferred adjudication. Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov’t Code §§ 552.108(b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that all of the responsive documents relate to investigations that resulted in convictions or deferred adjudication. Therefore, we cannot find that the responsive documents pertain to criminal investigations that concluded in final results other than convictions or a deferred adjudications. Accordingly, the city may not withhold any responsive information from disclosure pursuant to section 552.108(b)(2) of the Government Code.

You also claim that portions of the information are excepted from disclosure pursuant to section 552.101 in conjunction with sections 533.010, 611.002, and 773.091 of the Health and Safety Code. Section 533.010 concerns the confidentiality of information that identifies a person whose condition or treatment was studied for the purpose of reducing mental disorders and mental disabilities. Chapter 611 provides for the confidentiality of records created or maintained by a mental health professional. Section 773.091 makes confidential records of the identity, evaluation, or treatment of a patient by a physician or emergency medical technician. Upon review, we find that none of these confidentiality provisions of the Health and Safety Code apply to the police incident reports at issue. Accordingly, the city may not withhold the submitted information under section 552.101 in conjunction with sections 533.010, 611.002, or 773.091 of the Health and Safety Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court specifically held that information that relates to an attempted suicide is excepted from public disclosure pursuant to common-law privacy in conjunction with the statutory predecessor to section 552.101 of the Government Code. *Id.* at 683. In this instance, we find that there is no legitimate public interest in the identities of individuals who allegedly attempted suicide. *See id*; *see also* Open Records Decision Nos. 422 (1984), 396 (1983). Accordingly, we have marked the portion of the

submitted information that is protected by common-law privacy and must be withheld from disclosure under section 552.101. The city must release the remaining submitted information to the requestor.

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,

A handwritten signature in black ink, appearing to read 'DRS', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/sdk

Ref: ID#

Enc: Submitted documents

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