



April 26, 2002

Ms. April M. Virnig
Taylor, Olson, Adkins, Sralla, Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2002-2162

Dear Ms. Virnig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161974.

The City of Haltom City (the "city") received a written request for records pertaining to suicides and attempted suicides that occurred in the year 2001. The requestor seeks "the investigating officers' reports with the victims' names and personal information," as well as "statistics on the number of attempted and successful suicides in your area." You claim that portions of the requested information are excepted from required public disclosure pursuant to sections 552.101 and 552.130 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 they exist. Otherwise, the Act does not require the department to compile statistics or create a new document in response to this request. *See* Open Records Decision No. 452 (1986).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality statutes such as section 58.007 of the Family Code. Section 58.007 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 incident reports, we conclude that nine of the reports constitute the types of records that section 58.007 covers. Thus, the incident reports which we have marked must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 also incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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; Open Records Decision No. 611 at 1 (1992). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information 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. *Id.* at 683. Accordingly, the city must withhold any information that identifies individuals that made unsuccessful suicide attempts in the submitted attempted suicide reports. We have marked this information accordingly.

We note that the privacy rights of an individual lapse upon death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded”) (quoting Restatement of Torts 2d). Thus, we conclude that the department may not withhold any of the submitted information regarding successful suicide attempts from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See generally* Attorney General Opinion H-917 at 3-4 (1976); *see also* Open Records Decision No. 272 at 1 (1981).

For the telephone numbers we have not marked as private, we address your claim for protection under section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies only to an emergency 9-1-1 district established in accordance with subchapter D of chapter 772. *See* Open Records Decision No. 649 (1996). This statute makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. In this case, you have not established that the originating telephone numbers and addresses of 9-1-1 callers have been furnished by a service supplier. Furthermore, you do not indicate whether the city is part of an emergency communication district established under this section. Therefore, the information is not made confidential under section 772.318 of the Health and Safety Code.

You also claim that portions of the submitted information are excepted under section 552.101 in conjunction with section 773.091 of the Health and Safety Code. Section 773.091 provides:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality "does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services." *Id.* § 773.091(g). In this situation, you have not established that the information reflects communications between certified emergency medical services personnel or a physician and a patient. Nor have you established that the documents at issue are records created or maintained by emergency medical services personnel or a physician. Therefore, the city may not withhold the information under section 773.091 of the Health and Safety Code.

The submitted information contains social security numbers of living individuals that we have not marked as subject to section 552.101 and common law privacy. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the unmarked social security number of a living individual, you should determine whether the information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

You claim that portions of the information are excepted under section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license, license plate, and vehicle identification numbers, which we have marked, under section 552.130. However, we note that some of the driver's license numbers in the submitted information are those of deceased individuals. Section 552.130 is designed to protect the privacy interest of an individual. As noted above, this office has determined that privacy rights lapse upon the death of the subject. Therefore, section 552.130 does not except from disclosure the driver's license number of a deceased individual, and any such information must be released in this case.

In summary, the city must withhold the information which we have marked pursuant to section 552.101 in conjunction with common law privacy. Prior to releasing any unmarked social security number information, the city should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. Finally, the city must withhold Texas driver's license, license plate, and vehicle identification numbers, which we have marked, under section 552.130. The remainder of the submitted information must be released 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,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 161974

Enc: Submitted documents

c: Mr. Mike Halligan
Executive Director
Texas Mental Health Consumers
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(w/o enclosures)