



April 29, 2002

Mr. Michael C. Hayes
Assistant City Attorney
City of Kerrville
800 Junction Highway
Kerrville, Texas 78028-5069

OR2002-2211

Dear Mr. Hayes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161975.

The City of Kerrville Police Department (the "department") 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. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), 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 conclude that there is no legitimate public interest in the identities of the individuals who allegedly attempted suicide. *See id;* *see also* Open Records Decision Nos. 422 (1984), 396 (1983). Accordingly, we have marked the information that the department must withhold in order to protect the identities of those individuals.

Because the offense report in Case No. 2001011107 concerns an actual suicide, the decedent in that file does not have a right of privacy in her identity. *See Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.--Texarkana 1979, writ ref'd n.r.e.) (right of privacy is purely personal and lapses upon death); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). *But see* Attorney General Opinion JM-229.(1984) (if release of information about deceased person reveals highly intimate or embarrassing information about living persons, that information must be withheld under common-law privacy). You argue that certain information in this file identifying or relating to family members of individuals that made successful suicide attempts must be withheld from disclosure under section 552.101 and common-law privacy. In addressing this argument, we must review the information at issue to determine whether it refers to the family members or contains facts or information about them that is highly intimate or embarrassing. *See Moore*, 589 S.W.2d at 491 (right of privacy belongs to "person about whom" facts have been published). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We have marked the information in Case No. 2001011107 that the department must withhold under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.* The remaining information in this file does not meet the first prong of the *Industrial Foundation* test, and therefore may not be withheld from disclosure under section 552.101 and common-law privacy.

The submitted incident reports contain information that also must be withheld under section 552.130 of the Government Code. Section 552.130 excepts from disclosure Texas driver's license information and license plate numbers. We note, however, that section 552.130 is designed to protect the privacy interest of the individual. Thus, as privacy rights lapse upon an individual's death, the department may not withhold the driver's license information for a deceased individual. We have marked the information in the submitted documents that must be withheld under section 552.130.

To summarize: (1) we have marked the information in the submitted documents that must be withheld under section 552.101 and common-law privacy; (2) we have marked the information in the submitted documents that must be withheld under section 552.130 of the Government Code; and (3) the remaining information must be released.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 161975

Enc. Submitted documents

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