



April 30, 2002

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

OR2002-2240

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# 162126.

The Kennedale 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.. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 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.

Normally, only the information referencing the attempted suicides is private. Here, however, the requestor has asked for information regarding attempted suicides. Thus, we must protect the identities of those persons who attempted suicide in order to protect their privacy. 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. The remaining information in these offense reports is not protected by common-law privacy.

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 the successful suicide attempt at issue in incident number 01-02233 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).

We also note that the submitted incident reports contain information that 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 individuals who are deceased. We have marked the information in the submitted documents that must be withheld under section 552.130.

Further, we note that the remaining unmarked social security number of a living individual in incident number 01-02233 may be confidential under federal law. A social security number may be withheld in some circumstances 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 the social security number in the responsive records is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that you have redacted information in the submitted documents regarding “alert codes.” By redacting the “alert codes” in the submitted documents, you made it impossible for this office to review the those portions of the documents. Further, you have not explained what “alert codes” are; nor do you specifically argue that the redacted “alert

codes” are excepted from disclosure. Because we are unable to review this information, we have no basis for finding it confidential. *See* Gov’t Code § 552.352. Thus, we have no choice but to order the redacted “alert codes” released, per section 552.302 of the Government Code. If you believe such information is confidential and may not lawfully be released, you must challenge this decision in court as outlined below.

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; (3) the remaining unmarked social security number in incident number 01-02233 may be confidential under federal law; and (4) 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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 162126

Enc: Submitted documents

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