



May 2, 2002

Mr. Kyle G. Thomas
Assistant City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2002-2305

Dear Mr. Thomas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162256.

The Amarillo 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. The requestor clarified this request by stating that he requests the number of unsuccessful attempted suicides in 2001, and offense reports regarding successful suicides. You claim that 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

At the outset, we address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. You explain that the requestor made a request on January 28, 2002. You state that you timely asked the requestor to clarify his request. See Gov't Code § 552.222 (providing that a governmental body may ask the

¹We 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.

requestor to clarify the request if what information is requested is unclear to the governmental body). Thus, the ten-day time period to request a decision under section 552.301(b) with respect to the request was tolled on the date you sought clarification from the requestor. See Gov't Code § 552.301(b); Open Records Decision No. 663 at 5 (1999) (providing that ten-day period is tolled during the clarification process). You do not provide us, however, with the date on which you sought clarification from the requestor. Accordingly, we are unable to determine whether the ten-business-day time period to request a decision was tolled prior to its expiration. Further, assuming the request for clarification was timely, as the ten-business-day time period began to run again on the date the department received the clarification from the requestor, we are unable to determine whether the department sought a decision from this office prior to the expiration of a total of ten-business days. Thus, we are unable to conclude that the department complied with the requirements of section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You have not provided a compelling reason under section 552.108 to overcome the presumption of openness. But see Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). On the other hand, as section 552.101 provides a compelling reason to overcome the presumption of openness, we will address your argument under that exception. See Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

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 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 act of attempted suicide is private. In this instance, however, the requestor has asked specifically for information regarding attempted suicides. Therefore, withholding only certain details of the incident from the requestor would not preserve the common-law privacy rights of those persons who attempted suicide. Accordingly, to protect the privacy of the individuals to whom the information relates, we must protect the identities of these individuals. We conclude that the identity of an individual who allegedly attempted suicide is intimate or embarrassing information, and there is no legitimate public interest in this information. Thus, we have marked the information in Case Number 2001-00109999 that must be withheld under section 552.101 and common-law privacy.

You argue that identifying information regarding individuals that made successful suicide attempts must also be withheld under section 552.101 and 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 information that identifies individuals that made 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).

You also argue that information 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. *See Moore*, 589 S.W.2d at 491 (right of privacy belongs to the “person about whom” facts have been published). Although some of the police reports regarding successful suicide attempts refer to one or more of the deceased individuals’ family members, they do not contain any factual information about the family members that is highly intimate or embarrassing. Accordingly, we conclude that the information in the submitted documents that identifies or relates to deceased individuals’ family members does not meet the first prong of the *Industrial Foundation* test. Therefore, such information may not be withheld from disclosure under section 552.101 and common-law privacy.

We note that the submitted police reports contain information that must be withheld under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a driver’s license or license plate issued by an agency of the State of Texas. 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 Texas driver’s license information or license plate numbers for those individuals who are deceased under section 552.130. We have marked the information in the submitted documents that must be withheld under section 552.130.

We further note that the submitted information contains information that is subject to section 552.136 of the Government Code. This section provides that, "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). This provision was enacted to protect the privacy of an individual, and therefore, the protection extinguishes upon the individual's death. This conclusion is consistent with prior decisions of this office, which held that exceptions of the Public Information Act (the "Act") that only protect a person's privacy interest do not survive the death of that person. *See* Attorney General Opinion H-917 (1976) (common-law privacy under sections 552.101 and 552.102 lapses on person's death); Open Records Decision Nos. 536 (1989) (section 552.119 does not except peace officer's photograph after officer's death), 524 (1989) (section 552.114 does not except student records after student's death). Thus, pursuant to section 552.136, the department must withhold the card number we have marked only if the credit card account is jointly owned by the deceased and a person who is a joint holder of the account. Otherwise, the department must release the credit card number.

Finally, we note that the social security number in the submitted documents 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.* Because this federal provision is intended to protect the privacy interests of individuals, we do not believe that this provision encompasses the social security number of a deceased individual. However, the submitted records contain other social security numbers that may be confidential under section 552.101 in conjunction with the federal law. We have no basis for concluding that the social security numbers in the responsive records are 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.

To summarize: (1) we have marked the information in the submitted documents that must be withheld under section 552.101; (2) we have marked the information in the submitted documents that must be withheld under section 552.130; (3) we have marked a credit card number that may only be withheld if the credit card account is jointly owned by the deceased and a person who is a joint holder of the account; (4) 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; and (5) 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,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/KAE/seg

Ref: ID# 162256

Enc: Submitted documents

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