



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2008

Mr. Mark Daniel  
Evans, Daniel, Moore & Evans  
Sundance Square  
115 West Second Street, Suite 202  
Fort Worth, Texas 76102

OR2008-15813

Dear Mr. Daniel:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 328090.

The Watauga Police Department (the "department"), which you represent, received a request for information pertaining to three specified incidents. You claim the submitted incident report and call for service reports are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us the submitted incident report number 08-80 was the subject of a previous open records request in response to which this office issued Open Records Letter No. 2008-03970 (2008). In that ruling, we determined report number 08-80 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy. However, the requestor in this instance is the authorized agent for medical decisions pertaining to the person at issue in report number 08-80, and, as such, may have a right of access to the report. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Thus, the circumstances in this instance are different than those in Open Records Letter No. 2008-03970, and we conclude the department may not rely on that ruling as a previous determination. *See* Open Records Decision No. 673 (2001) (describing circumstances in which a governmental body may rely on the first type of previous determination). As such, we will address your claimed exception against disclosure for all of the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the requestor knows the identity of the individual involved as well as the nature of the information in report number 08-80. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, the entire report is generally subject to common-law privacy. Furthermore, we have marked portions of the submitted call for service report numbers 080513037 and 080128078 that are considered highly intimate or embarrassing and not of legitimate public concern. This marked information is also generally subject to common-law privacy.

As previously stated, however, the requestor is the authorized agent for medical decisions pertaining to the individual at issue in the submitted information. We are unable to determine whether or not the requestor is the individual's authorized agent in all circumstances. *See* Gov't Code § 552.023(a). Therefore, if the department determines the requestor is the individual's authorized agent in this instance, the requestor has a right of access to information that would ordinarily be withheld to protect the individual's common-law privacy. *Id.* Accordingly, if the requestor is the individual's authorized agent, the submitted incident report and the marked portions of the call for service reports may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy, and must be released to the requestor. If, however, the department determines the requestor is not the individual's authorized agent in this instance, the department must withhold report number 08-80 in its entirety and the information we have marked in the call for service reports under section 552.101 in conjunction with common-law privacy. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

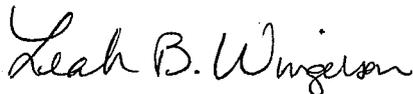
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Office of the Attorney General 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. 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 328090

Enc. Submitted documents

c: Requestor  
(w/o enclosures)