



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 18, 2009

Mr. Kevin Heyburn  
Assistant Attorney General  
Environmental Protection & Administrative Law Division  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2009-03540

Dear Mr. Heyburn:

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# 336731.

The Anatomical Board of the State of Texas (the "board"), which you represent, received a request for "procurement and disbursement information for each body regulated by the [board]" during 2006 and 2007. You state that you have released some of the responsive information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.115 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication

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<sup>1</sup>We 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.

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 types 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. See also *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.).

To demonstrate the applicability of the common-law privacy exception under section 552.101, a person must affirmatively establish both prongs of the test articulated in *Industrial Foundation*. 540 S.W.2d at 681-82. Because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. See *Moore*, 589 S.W.2d at 491; ORD 272 at 1 (privacy rights lapse upon death). The United States Supreme Court has determined, however, that surviving family members can have a privacy interest in information relating to their deceased relatives. See *Nat'l Archives & Records Admin. V. Favish*, 124 S. Ct. 1570 (2004). In this instance, you argue that the submitted information should be excepted from disclosure based upon the common-law privacy rights of the family of the deceased individual. As of the date of this decision, we have received no correspondence from the deceased's family asserting a privacy interest in the submitted information. Thus, we conclude that none of the submitted information may be withheld under section 552.101 in conjunction with the deceased's family's common-law privacy rights.

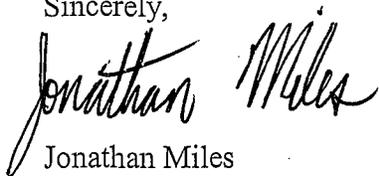
You also seek to withhold the submitted information under section 552.115 of the Government Code. Section 552.115(a) provides that “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021[.]” Gov't Code § 552.115(a). Section 552.115 only applies to information maintained by the bureau of vital statistics or a local registration official and not to information held by the board. See *Open Records Decision No. 338* (1982). Therefore, none of the submitted information may be withheld under section 552.115. As you raise no additional exceptions, the submitted information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in black ink and is positioned above the typed name.

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 336731

Enc. Submitted documents

c: Requestor  
(w/o enclosures)