



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2015

Ms. Amy L. Sims
Deputy City Attorney
Office of the City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 7945

OR2015-10081

Dear Ms. Sims:

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# 563094 (Lubbock File Nos. 1102 & 1109).

The City of Lubbock (the "city") received a request for the death investigation reports pertaining to two named individuals.¹ You claim the submitted 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 information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor, a representative of the Texas Department of State Health Services (the "department") Maternal Mortality and Morbidity Task Force (the "task force"), asserts she has a right of access to the requested information under section 34.008 of the Health and Safety Code. The task force is a multidisciplinary advisory committee administered by the department that studies and reviews information related to cases of

¹We note the city received clarifications of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

pregnancy-related deaths and severe maternal morbidity. *See* Health & Safety Code §§ 34.002(a)-(b), .005. Pursuant to section 34.007, the department determines a statistically significant number of pregnancy-related death cases and randomly selects such cases for review by the task force, and analyzes aggregate data of severe maternal morbidity to identify trends and, if feasible, selects severe maternal morbidity cases for review. *See id.* § 34.007. Section 34.008 provides, in relevant part:

(a) On selecting a case of pregnancy-related death or severe maternal morbidity for review, the department shall, in accordance with this section, obtain information relevant to the case to enable the task force to review the case. The department shall provide the information to the task force.

...

(c) On the request of the department, a hospital, birthing center, or other custodian of the requested information shall provide the information to the department. The information shall be provided without the authorization of the patient or, if the patient is deceased, without the authorization of the patient's family.

Id. § 34.008(a), (c). The requestor asserts she has a right of access under section 34.008 to information pertaining to maternal deaths and states “[a] maternal death includes any death of a woman residing in Texas who, at the time of death, was pregnant or whose pregnancy ended within 12 months of her death, regardless of the cause.” However, as noted above, section 34.008(a) states the department shall obtain information relevant to the cases of pregnancy-related death or severe maternal morbidity chosen for review by the task force. Thus, the department has a right of access to information pertaining to cases of pregnancy-related death or severe maternal morbidity. Section 34.001 of the Health and Safety Code provides, in relevant part:

(8) “Maternal morbidity” means a pregnancy-related health condition occurring during pregnancy, labor, or delivery or within one year of delivery or end of pregnancy.

...

(12) “Pregnancy-related death” means the death of a woman while pregnant or within one year of delivery or end of pregnancy, regardless of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.

(13) “Severe maternal morbidity” means maternal morbidity that constitutes a life-threatening condition.

Id. § 34.001(8), (12), (13). Thus, the statutory definitions regarding the cause of death are not as broad as the requestor's claim. We note the causes of death for the two named individuals were murder and accidental by mixed drug intoxication. Further, the information the department submitted to this office failed to demonstrate, and we are unable to determine, the submitted information is relevant to cases of pregnancy-related death or severe maternal morbidity. Consequently, in this instance, we find the requestor has not established a right of access to the submitted information pursuant to section 34.008 of the Health and Safety Code.

You seek to withhold the identifying information of the juveniles listed in the submitted information under section 58.007 of the Family Code. 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 information protected by other statutes, such as section 58.007 of the Family Code, which provides, in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child[.]

Fam. Code § 58.007(c), (e), (j)(1). Section 58.007 is applicable to law enforcement records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2).

Section 58.007(e) allows for access to juvenile law enforcement records subject to section 58.007(c) by a child’s parent or guardian. *Id.* § 58.007(e). However, any personally identifiable information concerning another juvenile suspect, offender, victim, or witness must be redacted from documents subject to release under section 58.007(e). *Id.* § 58.007(j)(1). We note section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant for purposes of section 58.007. *See id.* § 58.007(c). Although we understand you to assert the submitted information is confidential under section 58.007(j)(1), the submitted information does not depict a juvenile as a suspect, offender, or defendant. Therefore, we find you have failed to demonstrate the applicability of section 58.007(c) to the information at issue. Because section 58.007(c) is not applicable to the information, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. You state incident report number 120001591 pertains to a concluded criminal investigation by the city’s police department that did not result in a conviction or deferred adjudication. Based on your representation and our review, we conclude section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic

information, the city may withhold incident report number 120001591 under section 552.108(a)(2) of the Government Code.²

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). We note the common-law right to privacy is a personal right that “terminates upon the death of the person whose privacy is invaded.” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 652I (1977))); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Therefore, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find the information we have marked in the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to sections 552.130 and 552.136 of the Government Code.³ Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the

²As our ruling is dispositive, we need not address your remaining argument against disclosure for this information.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

right of privacy lapses at death, driver's license information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also Belo*, 472 F. Supp. at 147; *see also* Attorney General Opinions JM-229, H-917; ORD 272 at 1. Upon review, we find the city must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states "notwithstanding any other provision of [the Act], 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). The city must withhold the debit card number we have marked in the remaining information under section 552.136 of the Government Code.

As previously noted, the requestor is a representative of the department and asserts she is seeking the requested information in her official capacity as a representative of the department. Thus, the city has the discretion to release some of the information at issue pursuant to an intergovernmental transfer. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). Sections 552.108 and 552.136 of the Government Code and the doctrine of common-law privacy do not have specific release provisions governing public release of information. Thus, pursuant to the intergovernmental transfer doctrine, the city has the discretion to release the information subject to sections 552.108 and 552.136 and common-law privacy. We note, however, section 552.130 of the Government Code has an access provision governing release of information. Thus, the information we have marked under section 552.130 of the Government Code may not be released pursuant to the intergovernmental transfer doctrine.

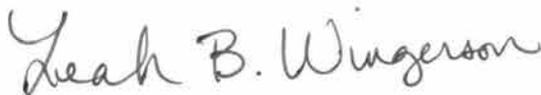
In summary, with the exception of the information we have marked that must be withheld under section 552.130 of the Government Code, the city has the discretion to release the submitted information to the Department of State Health Services under the intergovernmental transfer doctrine. If the city chooses not to exercise its discretion under

the intergovernmental transfer doctrine, then (1) with the exception of basic information, the city may withhold incident report number 120001591 under section 552.108(a)(2) of the Government Code; (2) the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the city must withhold the information we have marked under section 552.130 of the Government Code; (4) the city must withhold the information we have marked under section 552.136 of the Government Code; and (5) the city must release the remaining information.⁴

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 563094

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the remaining information includes social security numbers of living individuals. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).