



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1994

Mr. Rick Perry
Commissioner
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR94-805

Dear Commissioner Perry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29168.

The Texas Department of Agriculture ("the department") received a request for the investigative file in TDA Incident No. 03-94-0070. You say the department released the report with redactions of certain medical information. You ask whether this redacted information is excepted from required public disclosure under section 552.101 of the Government Code and the common-law right to privacy.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

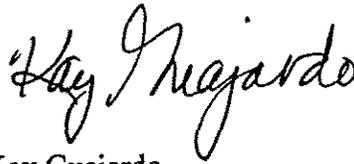
While common-law privacy may protect an individual's medical history, it does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). This office has determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records

Decision No. 455 (1987); the results of mandatory urine testing, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982).

We do not consider the medical information in the report to be the sort of highly intimate and embarrassing information that is protected from required public disclosure based on the common-law right to privacy. Therefore, the department may not withhold the information based on section 552.101 of the Government Code and the common-law right to privacy.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/SG/rho

Ref.: ID# 29168

Enclosures: Submitted documents

cc: Mr. Richard E. Whatley
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(w/o enclosures)