



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 28, 1994

Ms. Elaine L. Fannin
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR94-829

Dear Ms. Fannin:

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# 29515.

The Texas Department of Agriculture (the "department") received a request for a copy of the investigative report in TDA Incident No. 01-94-0010. You say the department released a copy of the report with redaction of certain medical information. You assert that this medical information is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 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.*; illnesses, operations, and physical handicaps of applicants, *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 (1983); and information regarding drug overdoses, acute alcohol intoxication, obstretical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982).

We have reviewed the medical information in report TDA Incident No. 01-94-0010. We believe that this medical information is not highly intimate or embarrassing information, the release of which would be objectionable to a reasonable person. Accordingly, we conclude that the department may not withhold the medical information under section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 29515

Enclosures: Submitted documents

cc: Ms. Stacey Lightfoot
Legal Assistant
Miller & Herring Attorneys, P.C.
P.O. Box 2330
Amarillo, Texas 79105-2330
(w/o enclosures)