



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 15, 1997

Mr. John T. Richards
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR97-0070

Dear Mr. Richards:

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# 103039.

The Department of Health (the "department") received a request for information concerning various treatment records of a deceased individual. The request was accompanied by a duly executed "Authorization to Release Confidential Information" form, signed by the surviving husband. A copy of the deceased's file with several redactions was released to the requestor. The redactions pertain to a third party who is not the subject of the request and the department seeks to withhold the redactions based on section 552.101 of the Government Code. You enclose the marked portions of the information you seek to withhold.

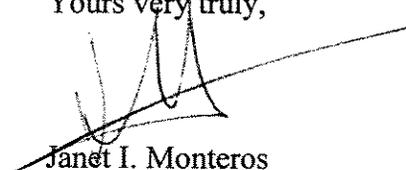
You acknowledge that more than ten days passed from the time you received the request for information and the time you requested an opinion from this office. You received the information request on September 30, 1996 and this office received your request on October 21, 1996. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2.

We conclude that compelling reasons do exist for withholding certain documents under section 552.101, which excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision including information that is confidential under constitutional or common-law privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that information concerning the intimate relations between individuals and their family members is excepted from required public disclosure under constitutional or common-law privacy. *See* Open Records Decision No. 470 (1987). We have reviewed the redacted portions submitted for our consideration and agree that the marked information must be withheld under constitutional or common-law privacy.

We are resolving this matter with this 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 103039

Enclosures: Marked documents

cc: Ms. Nyria Roque-Jackson
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(w/o enclosures)