



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 12, 1997

Ms. Lisa S. Stefani
Legal Counsel
Texas Funeral Service Commission
510 S. Congress Avenue, Suite 206
Austin, Texas 78704-1716

OR97-1374

Dear Ms. Stefani:

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# 107302.

The Texas Funeral Services Commission (the "commission") received an open records request for "complaints, inspection reports, documents indicating ownership and ownership changes and forms used for noting ownership and ownership changes for funeral homes in . . . the Austin area." You indicate that most of the requested information will be made available to the requestor. You inquire, however, whether citizen complaints filed with the commission are made confidential under article 4582b, V.T.C.S., or if the complaints come within the protection of a right of privacy.

Section 6D(a) of article 4582b requires the commission to create an "information file" pertaining to each complaint it receives against funeral directors, embalmers, apprentices, and funeral establishments. Section 6D(b) provides:

The commission shall include in each information file a description of the complaint, the date on which the complaint was filed, the name of the complainant, a description of any information obtained by the commission after investigating the complaint, a description and date of any formal actions taken by the commission relating to the complaint, a description of the current status of the complaint, and other information that the commission considers appropriate.

Section 6D(d) of article 4582b further provides that the information file is public, except for "information in the file obtained by the commission after investigating the complaint." You do not contend, nor is it apparent to this office, that any of the complaints at issue were obtained by the commission after the commencement of a commission investigation. Although section 6D(b) does not specifically include the initial complaint received by the commission as a document that must be included in the information file, the complaints submitted to this office consist of the precise types of information that are specifically made public by section 6D(d), *e.g.*, a description of the complaint, the date on which the complaint was filed, and the name of the complainant. We therefore conclude that none of the information at issue is made confidential under article 4582b.

You note that the complaints received by the commission "often contain information about a complainant or related party that they wish to keep private" and inquire as to whether the complaints come within the protection of a right of privacy. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common-law right to privacy.¹ *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

Where information is specifically made public by statute, any common-law right of privacy in that information is generally abrogated. *See, e.g.*, Open Records Decision No. 544 (1990). Consequently, none of the information at issue that may be characterized as a "description of the complaint" may be withheld from the public on privacy grounds. On the other hand, some of the complaints submitted to this office contain references to the emotional state of the complainants and others. This type of information falls outside the "description of the complaint" that is required to be released to the public under section 6D(d). We furthermore believe that these brief portions of the complaints reveal "highly intimate" information about the complainants and others that would come within the protection of common-law privacy. *See* Open Records Decision No. 422 (1984). We have marked in brackets the portions of the complaints that the commission must withhold pursuant to common-law privacy in conjunction with section 552.101 of the Government Code. The commission must release all of the remaining information.

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 should not be relied upon as a previous

¹The right of privacy, however, is purely personal and lapses upon death. *See Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.--Texarkana 1979, writ ref'd n.r.e.). *See also* Attorney General Opinions JM-229 (1984); H-917 (1976).

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/RWP/alg

Ref: ID# 107302

Enclosures: Marked documents

cc: Mr. David H. Donaldson, Jr.
George, Donaldson & Ford
P.O. Box 684667
Austin, Texas 78768-4667
(w/o enclosures)

