



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 23, 1998

Ms. Judith A. Hunter
Paralegal
City Attorney's Office
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR98-2812

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119882.

The City of Georgetown (the "city") received requests for information relating to a fatal construction accident that occurred August 17, 1998. You have submitted a representative sample of the responsive information.¹ You contend that all responsive information is excepted from public disclosure by Government Code section 552.108 and by Government Code section 552.101 in conjunction with rights of privacy. We have considered the exceptions you claim and have reviewed the documents at issue.

We first address your contention that the subject information is protected by a right of privacy. Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. This statute excepts information from public disclosure where such disclosure would violate a constitutional or common-law privacy right. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from public disclosure on the basis of a right of privacy if (1) the information

¹ In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* Psychiatric treatment of mental disorders and attempted suicide, are examples of information protected by rights of privacy. *Id.*; *see also*, Open Records Decision No. 470 (1988) (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common-law privacy). Note, however, that privacy rights lapse on the death of the individual. Attorney General Opinion H-917 (1976). None of the responsive information may be withheld on the basis of a deceased individual's rights of privacy. We have highlighted information that must be withheld as confidential on the basis of privacy rights.

Section 552.101 of the Government Code also excepts from public disclosure information deemed confidential by statute. Section 552.130 of the Government Code excepts from public disclosure information related to, among other things, Texas driver's licenses. Information of this nature has been highlighted and must be withheld.

We next address your arguments under Section 552.108 of the Government Code. Section 552.108 of the Government Code, as amended by the Seventy-fifth Legislature, excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

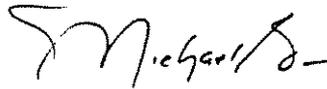
(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

You indicate that the subject incident is being investigated by OSHA. We note that the role of this federal agency is not primarily criminal law enforcement. Further, you do not indicate what, if any, crime is being investigated and the submitted information does not, on its face, suggest any criminal activity. You also relate that the Williamson County District Attorney's Office has indicated that it may investigate this incident in the future. From your representations we conclude that there is no current criminal investigation into the subject incident. One of the purposes of the section 552.108 exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. Open Records Decision Nos. 133 (1976), 127 (1976). However, investigations into non-criminal matters are not excepted from disclosure by this statute. *Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (predecessor statute to section 552.108 not applicable where no criminal investigation resulted). We conclude that you have not demonstrated how the subject information deals with the detection, investigation, or prosecution of crime or how its release would interfere

with the detection, investigation, or prosecution of crime. Section 552.108 of the Government Code is therefore inapposite. In conclusion, those portions of the subject information that are considered confidential have been highlighted and must not be released. The remaining information is presumed public and must be released.

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

Yours very truly,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 119882

Enclosures: Submitted documents

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