



January 19, 2000

Mr. Steve D. Monté
Assistant City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR2000-0172

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131229.

The Dallas Police Department (the “department”) received a request for information regarding a named police officer placed on administrative leave. The requestor is an attorney and represents the officer who is the subject of the requested information. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code based on the common law right of privacy and Chapter 611 of the Health and Safety Code. We have considered the exception you claim and reviewed the submitted information.

The Public Information Act (the “Act”) imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body’s receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public and must be released. *See Gov’t Code §552.302*. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). A claim under section 552.101 provides a compelling reason to overcome the presumption. Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. You argue that disclosure of the requested information would violate the complainant’s common law right to privacy. Information may be withheld under section 552.101 in conjunction with common law privacy when the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

This office has determined that the following information is excepted from disclosure by common law privacy: the fact that a person broke out in hives as a result of severe emotional distress, Open Records Decision No. 470 (1987), the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987), and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982). *See also* Open Records Decision No. 422 (1984) (regarding emotional or mental distress).

After reviewing the submitted information, the documents contain some information that implicates the privacy interests of the named officer. However, the requestor in the present case is an attorney representing the named officer and is therefore his authorized representative. *See Gov't Code § 552.229*. Thus, the specific information in the submitted documents that implicates the privacy interests of the named officer is not excepted from disclosure to this requestor. *See Gov't Code § 552.023*. We do not believe any other portions of the information are protected by a right of privacy. Therefore, you must release all of the requested information to this requestor. If the department receives a subsequent request for the same information, you should reassert your claimed exceptions again at that time.

In addition, you argue that certain medical records contained in the information at issue are protected from disclosure under section 552.101 in conjunction with Chapter 611 of the Health and Safety Code. Chapter 611 of the Health and Safety Code provides for the confidentiality of mental health records created or maintained by a mental health professional. Section 611.002 provides in relevant part as follows:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Therefore, you may release these records only as provided by the statute. Health & Safety Code §§611.004(4), .0045; *see* Open Records Decision No. 565 (1990). In this case, the requestor represents the patient; thus, with the consent of the patient, the requestor has a right of access to the records. Consequently, upon receiving the proper consent by the patient, the department must disclose the records described in section 611.002. *See Gov't Code §552.229*.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.