



April 23, 2002

Lieutenant Earl Donnell
Taylor County Sheriff's Department
450 Pecan Street
Abilene, Texas 79602-1692

OR2002-2081

Dear Lt. Donnell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161696.

The Taylor County Sheriff's Department (the "sheriff") received a written request for records of successful suicide attempts and statistics regarding the number of successful and unsuccessful attempted suicides that occurred in the year 2001. You have submitted to this office as responsive to the request offense reports pertaining to both successful and unsuccessful suicide attempts.¹ You contend that the requested information, a representative sample of which you submitted to this office, is excepted from required public disclosure pursuant to section 552.101 of the Government Code.² As you make no reference to the request for statistics regarding successful suicide attempts, we assume that you have released those statistics to the extent they exist. Otherwise, the Act does not require the department to compile statistics or create a new document in response to this request. *See Open Records Decision No. 452 (1986).*

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident*

¹We assume you submitted the offense reports pertaining to unsuccessful suicide attempts as responsive to the portion of the records request seeking statistical information regarding unsuccessful suicide attempts.

²In 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 No. 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.

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.

Two of the submitted offense reports concern alleged suicide attempts. In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court specifically held that information that relates to an attempted suicide is excepted from public disclosure pursuant to common-law privacy in conjunction with the statutory predecessor to section 552.101 of the Government Code. *Id.* at 683. In this instance, we conclude that there is no legitimate public interest in the identity of the individuals who allegedly attempted suicide. *See also* Open Records Decision Nos. 472 (1984), 396 (1983). Accordingly, we have marked the information in Offense Report Nos. 106632 and 100063 that the sheriff must withhold in order to protect the identity of those individuals. The remaining information in these two offense reports is not protected by common-law privacy and therefore must be released to the requestor.

You also contend that some of the information at issue should be withheld on privacy grounds because the information may place someone in a false light. False-light invasion of privacy was discussed at length in Open Records Decision No. 579 (1990). As noted in that decision, the gravamen of a false-light privacy complaint is not that the information revealed is confidential, but that it is false. Therefore, an exception to the Public Information Act focused on the confidentiality of information does not embrace this particular tort doctrine. We further note that the Texas Supreme Court has held that false-light privacy is not an actionable tort in Texas. *Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). Consequently, the sheriff may not withhold any of the requested information pursuant to false-light privacy.³

Because the remaining two offense reports submitted to this office concern actual suicides, the decedents in those files do not have a right of privacy in their respective identities. *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.) (right of privacy is purely personal and lapses upon death); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). *But see* Attorney General Opinion JM-229.(1984) (if release of information about deceased person reveals highly intimate or embarrassing information about living persons, that information must be withheld under common-law privacy). After reviewing Offense Report No. 01-000025, we conclude that none of the information in this report implicates the privacy interests of any living person. Consequently, Offense Report No. 01-000025 must be released in its entirety.

³If, however, portions of the information at issue are in fact inaccurate or untrue, there is no reason that the sheriff may not also release, along with the requested documents, other supplemental information that explains why and to what extent the information is inaccurate or that otherwise clarifies the information contained in the records at issue.

Similarly, we conclude that all of the information contained in the remaining report, Offense Report No. C02-00212, must be released, with the following exception. Offense Report No. C02-000212 contains the compilation of an individual's criminal record. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. Consequently, the sheriff must withhold the criminal history compilation, which we have marked, on privacy grounds.

In summary, the sheriff must withhold on privacy grounds the information that we have marked in Offense Report Nos. 106632 and 100063, which identifies or would tend to identify the individuals who have attempted suicide; the remaining information in these two reports must be released. Offense Report No. 01-000025 must be released in its entirety. Finally, the only information contained in Offense Report No. C02-000212 that is excepted from required public disclosure is the compilation of an individual's criminal history; the remaining information in this report must be released to the requestor.

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.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen A. Bates
Assistant Attorney General
Open Records Division

KAB/RWP/sdk

Ref: ID# 161696

Enc: Submitted documents

c: Mr. Mike Halligan
Executive Director
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(w/o enclosures)