



April 24, 2002

Ms. Allyson Mitchell
Assistant Criminal District Attorney
Anderson County
500 North Church
Palestine, Texas 75801

OR2002-2108

Dear Ms. Mitchell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161763.

The Anderson County Sheriff's Department (the "sheriff") received a request for the investigating officer's reports concerning individuals who committed suicide for the year 2001, as well as "statistics on the number of attempted and successful suicides in your area." You inform us that the requested statistics will be released to the requestor, but claim that portions of the requested reports are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. *See also* Open Records Decision No. 659 at 4-5 (1999) (summarizing types of information that are protected by rights of privacy).

We note, however, that the privacy rights of an individual lapse upon death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded”) (quoting Restatement of Torts 2d). Thus, we conclude that the sheriff may not withhold from disclosure any of the submitted information regarding successful suicide attempts pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See generally* Attorney General Opinion H-917 at 3-4 (1976); *see also* Open Records Decision No. 272 at 1 (1981).

We also note that the submitted information contains a driver’s license number. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

However, we note that the driver’s license number in the submitted information is that of a deceased individual. Section 552.130 is designed to protect the privacy interest of an individual. As noted above, this office has determined that privacy rights lapse upon the death of the subject. Therefore, section 552.130 does not except from disclosure the driver’s license number of a deceased individual, and it must be released in this case.

Finally, we also note that the submitted records contain a social security number. A social security number may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 at 2-4 (1994). You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the sheriff to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number in question was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution you, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing the social security number, the sheriff should ensure that the number was not obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990.

To summarize, the social security number must be withheld only if it was obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990. The remainder of the submitted information 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 161763

Enc. Submitted documents

c: Mr. Mike Halligan
Executive Director
Texas Mental Health Consumers
7701 North Lamar, Suite 500
Austin, Texas 78752
(w/o enclosures)