



April 24, 2002

Mr. Cary L. Bovey
Law Offices of Cary L. Bovey
600 Round Rock West Drive, Suite 603
Round Rock, Texas 78681

OR2002-2111

Dear Mr. Bovey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161771.

The Llano Police Department (the “department”), which you represent, received a request for investigating officer’s suicide reports for 2001 and statistics on the number of attempted and completed suicides in the area. The requestor subsequently narrowed the request to exclude any information regarding attempted and completed suicides by children, and clarified that only names and “other pertinent data usually in the officer’s report” are being sought with respect to the first portion of the request. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We note that your request for a decision does not address the portion of the request seeking statistical information. We assume that the department has released this information to the extent that it exists. If you have not, you must do so at this time. *See* Gov’t Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000). We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.108 provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(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

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in a conviction or deferred adjudication

You state that the incidents on which the submitted reports are based relate to investigations that did not result in conviction or deferred adjudication. We therefore conclude that the department may withhold most of the information at issue pursuant to section 552.108(a)(2) of the Government Code. However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Basic information includes the identification and description of the complainant and the location of the offense. *Id.*

In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court held that information relating to attempted suicide is private. 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. *Id.*; Gov't Code § 552.101. Here, because the requestor knows that the information relates to attempted suicides, we must protect the identifying information of the individuals who have attempted suicide. In this instance, we conclude that there is no legitimate public interest in these individuals' identities, and the information is intimate or embarrassing. Thus, we have marked the basic information that identifies these individuals that you must withhold under common-law privacy. You may not withhold the remaining basic information under section 552.108 or common-law privacy.

We now address your arguments for withholding the remaining basic information. The disclosure of medical records is governed by the Medical Practice Act (the "MPA"), as codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(b), (c). After reviewing the submitted information, we conclude that the remaining basic information is not subject to the provisions of the MPA.

You also claim that some information is excepted under section 611.002 of the Health and Safety Code. Chapter 611 of the Health and Safety Code provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002 provides in relevant part:

(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.

Health & Safety Code § 611.002(a). We have determined that you may not withhold the remaining basic information under section 611.002 of the Health and Safety Code.

Finally, you argue that section 773.091 of the Health and Safety Code excepts from disclosure some of the requested information. Chapter 773 of the Health and Safety Code governs emergency medical services (“EMS”) records. Section 773.091 of the Health and Safety Code provides in relevant part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(a), (b). Section 773.091 further provides that

[t]he privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(g). After reviewing the submitted information, we conclude that the remaining basic information is not confidential under section 773.091 of the Health and Safety Code.

In summary, you may withhold the requested information under section 552.108, with the exception of basic information. You must withhold the basic information we have marked under section 552.101 in conjunction with common-law privacy. The remaining basic information must be released.

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).

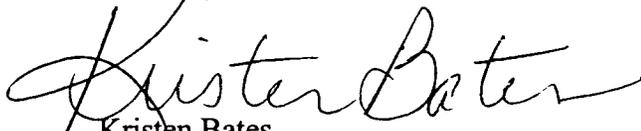
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 General Services 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,

A handwritten signature in cursive script that reads "Kristen Bates".

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 161771

Enc: Submitted documents

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