



April 24, 2002

Ms. Susan Camp-Lee
Sheets & Crossfield
309 East Main Street
Round Rock, Texas 78664-5246

OR2002-2115

Dear Ms. Camp-Lee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161779.

The Round Rock Police Department (the “department”), which you represent, received a request for police reports and other information relating to attempted and successful suicides. You state that the department does not make reports on cases involving suicide attempts or threats. You claim that information held by the department that is responsive to this request is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted. We note that the department has not submitted information that is responsive to the request for statistics on the number of attempted and successful suicides. We therefore assume that the department has released any information, to the extent that it exists, that is responsive to that aspect of this request. If not, then the department must do so at this time. *See Gov’t Code §§ 552.301, .302; Open Records Decision No. 664 (2000).* We also note, however, that chapter 552 of the Government Code does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information. *See Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).*

As section 552.108 of the Government Code is the more inclusive exception you raise, we address it first. Section 552.108, the “law enforcement exception,” provides in 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:

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

...

(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:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why this exception is applicable to the information. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that the submitted information includes documentation of calls for service regarding suicide attempts or threats and records of investigations of successful suicides. You explain that although suicide is not considered to be a criminal offense, the department investigates such incidents in the same manner as criminal cases until the cause, manner, and means of death can be determined. You assert that the release of information relating to concluded suicide investigations might result in intimidation or harassment of witnesses and would reveal the department's investigative methods in such cases. You argue that disclosure of the details of these cases "would seriously hamper future investigations of the same nature." Having considered your arguments, we conclude that the department has not directed our attention to any specific information, the release of which would interfere with future investigations of apparent suicides. Therefore, the department may not withhold any of the submitted information under section 552.108. *See also* Open Records Decision Nos. 531 at 3 (1989) (disclosure of generally-known law enforcement policies would not interfere with law enforcement and crime prevention.), 252 at 3 (1980) (sheriff neither identified any specific information relating to suicide case nor showed how and why release of such information might adversely affect law enforcement efforts).

Next, we address the department's claim under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of

ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy encompasses the specific types of information that the Texas Supreme Court deemed to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other information also is private under section 552.101. See *generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information that attorney general has determined to be private).

You assert that the submitted records contain intimate and embarrassing information that pertains to reported suicide attempts or threats and to victims of successful suicides and their families. With respect to the information that relates to successful suicides, we first note that a deceased individual has no right to privacy. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App. -- Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy is personal right that lapses at death). Thus, common-law privacy is not applicable to the submitted information that relates to the suicide victims. We conclude that the documents that pertain to successful suicides do not contain any information that is protected by common-law privacy under 552.101. With respect to the records of calls for service regarding suicide attempts or threats, we have marked information that would tend to identify individuals who attempted or threatened to commit suicide. The department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

We note that the rest of the submitted information includes the social security numbers of living persons. Section 552.101 also encompasses information that another statute makes confidential. A living person's 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 a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the department obtained or maintains the social security numbers of living persons that appear in the submitted documents pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain these social security numbers. We therefore have no basis for concluding that these social security numbers were obtained or are maintained pursuant to such a law and are therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing a living person's social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

The remaining information also includes Texas driver's license, license plate, and vehicle identification numbers. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from [required public disclosure] 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[.]

Gov't Code § 552.130(a)(1)-(2). Section 552.130 protects the privacy interests of the persons to whom Texas driver's license, license plate, and vehicle identification numbers pertain. Thus, under section 552.130, the department must withhold the Texas driver's license number of a living person, as well as the Texas license plate or vehicle identification number of a vehicle in which a living person has an interest. Section 552.130 does not except from disclosure either a deceased person's driver's license number or information that relates only to a deceased person's vehicle. We have marked Texas driver's license numbers relating to living persons that must be withheld under section 552.130. We also have marked Texas license plate and vehicle identification numbers that are excepted from disclosure under section 552.130 if they relate to a vehicle in which a living person has an interest.

The remaining information also includes bank account numbers. Section 552.136, as added to chapter 552 of the Government Code by the Seventy-seventh Legislature, is applicable to certain account numbers. This exception provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked the bank account numbers that appear in the submitted documents. As section 552.136 also protects the privacy interests of living persons, these account numbers must be withheld from disclosure if a living person has an interest in the account. If not, then these account numbers are not excepted from disclosure under section 552.136.

In summary, the department must withhold some of the information that relates to suicide attempts or threats under section 552.101 of the Government Code in conjunction with common-law privacy. The department may also be required to withhold the social security numbers of living persons under section 552.101 in conjunction with federal law. Texas driver's license, license plate, and vehicle identification numbers must be withheld under section 552.130 if the information relates to a living person or to a vehicle in which a living person has an interest. The bank account numbers must be withheld under section 552.136 if a living person has an interest in the account. The department must release the rest of the submitted information.

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).

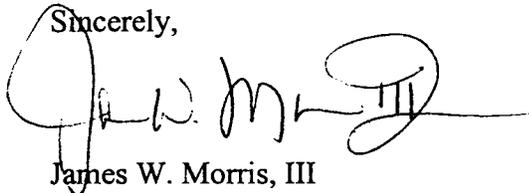
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 161779

Enc: Marked documents

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