



April 25, 2002

Ms. Myrna S. Reingold
Galveston County - Legal Department
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454

OR2002-2145

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161811.

The Galveston County Sheriff's Department (the "sheriff") received a request for information relating to attempted and successful suicides. You claim that the requested information 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.

Initially, we note that the sheriff has not submitted any information that is responsive to the request for statistics on the number of attempted and successful suicides. We therefore assume that the sheriff has released any information, to the extent that it exists, that is responsive to that aspect of this request. If not, then the sheriff must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). We further note, however, that chapter 552 of the Government Code does not require the sheriff to release information that did not exist when this 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). We also note that four of the submitted offense reports do not involve attempted or successful suicides and therefore are not responsive to this request for information. The non-responsive reports, which we have marked, need not be released to the requestor.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. The sheriff

raises section 552.101 in conjunction with 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.
- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). 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. In this instance, the submitted documents are law enforcement records, not the records of a mental health professional. Therefore, none of the submitted information is made confidential under section 611.002 of the Health and Safety Code.

We note, however, that section 261.201 of the Family Code is applicable to one of the submitted offense reports. Chapter 261 of the Family Code governs information that relates to investigations of child abuse or neglect. Section 261.201 provides in part:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
 - (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
 - (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that one of the submitted offense reports consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). You do not inform this office that the sheriff has any regulations that would allow the release of the information in question. We therefore presume that no such regulation exists. Based on that assumption, we have marked an

offense report that is confidential in its entirety under section 261.201 of the Family Code. The sheriff must also withhold this report under section 552.101 of the Government Code as information made confidential by law.

Next, we address the sheriff's claim under section 552.108 of the Government Code with regard to the rest of the responsive information. Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]" 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 section 552.108 applies to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). The sheriff indicates that the remaining offense reports relate to concluded investigations that did not result in a conviction or a deferred adjudication. We therefore conclude that the sheriff has demonstrated that section 552.108(a)(2) is applicable to these reports.

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). Section 552.108(c) refers to the basic front-page 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). Section 552.108(c) requires the release of basic information, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

Basic information under section 552.108(c) includes the identity of the complainant. *See* Open Records Decision No. 127 at 3-4 (1976). Basic information also includes a detailed description of the incident that was investigated. *Id.* 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 held that information relating to attempted suicides 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 that comes within the common-law right to privacy. *See* 540 S.W.2d at 683; Gov't Code § 552.101. Ordinarily, common-law privacy would protect the details of incidents that would tend to reveal whether attempted suicide victims' injuries were self-inflicted. *See* Open Records Decision No. 422 at 2 (1984). In this case, however, the requestor already is aware that the requested information relates to individuals who attempted to commit suicide. Thus, withholding the details of these incidents would not adequately protect the victims' privacy interests. Therefore, under these specific circumstances, we conclude that the basic

information that would tend to identify the complainants who attempted to commit suicide must be withheld from disclosure under section 552.101 in conjunction with common-law privacy. We have marked that information. Otherwise, the sheriff must release the basic information that relates to the investigations of attempted suicide in accordance with section 552.108(c). The sheriff may withhold the remaining information that relates to those investigations under section 552.108(a)(2).

With regard to the remaining offense report, which relates to a successful suicide, we note that an individual's privacy rights lapse at that person's death. *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.); *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); *see generally* Attorney General Opinion H-917 at 3-4 (1976); *see also* Open Records Decision No. 272 at 1 (1981). Therefore, in the case of the successful suicide, the sheriff must disclose the name of the deceased complainant in releasing basic information. The sheriff may withhold the rest of the information that relates to the successful suicide under section 552.108(a)(2).

In summary, one of the responsive offense reports is confidential in its entirety under section 261.201 of the Family Code. The sheriff must withhold that report under section 552.101 of the Government Code. The sheriff may withhold the rest of the responsive offense reports under section 552.108(a)(2) of the Government Code, but must release basic information under section 552.108(c). However, the sheriff must not release the information that would identify the complainants who attempted to commit suicide. The sheriff must withhold that information under section 552.101 in conjunction with common-law privacy.

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).

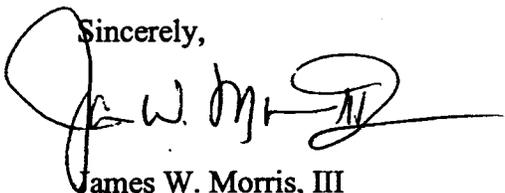
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 'J. W. Morris, III', with a large, stylized initial 'J' and a horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 161811

Enc: Marked documents

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