



August 12, 2002

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2002-4420

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166967.

The City of Conroe (the “city”) received a written request for a particular case report. You have informed the requestor and us in your brief that the report pertains to a police investigation of an attempted suicide. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.108(a)(2), and 552.130 of the Government Code.

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 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.

In *Industrial Foundation*, 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. Normally, only the information referencing the act of attempted suicide is private. In this instance, however, you have publically disclosed the fact that the requested information pertains to an attempted suicide. Furthermore, it is apparent to this office that the requestor knows the identity of the individual who attempted suicide as well as the fact that the individual made such an attempt. Consequently, withholding only certain details of

the incident from the requestor would not preserve the common-law privacy rights of the person who attempted suicide. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold the requested report in its entirety pursuant to section 552.101 of the Government Code.

We note, however, that a person or a person's authorized representative has a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests. See Gov't Code § 552.023. Therefore, if the city determines that the requestor is the authorized representative of the person to whom this information relates, then the city may not withhold the offense report under section 552.101. If the requestor is not this person's authorized representative, the city must withhold the report in its entirety under section 552.101 in conjunction with common-law privacy.

In the event the city determines that the requestor is the authorized representative of the person to whom this information relates, you nevertheless claim that the submitted offense report is excepted under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the requested information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to 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). Thus, with the exception of the basic offense and arrest information, the city may withhold the requested information from disclosure based on section 552.108(a)(2). We note that the city has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

To summarize, we conclude that: (1) if the requestor is not the authorized representative of the person to whom the submitted information relates, the submitted offense report must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) if the requestor is the authorized representative of the person to whom the submitted information relates, the submitted offense report may be withheld under section 552.108(a)(2), with the exception of the basic offense and arrest information, which 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,

A handwritten signature in black ink, appearing to read 'Dr. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/RWP/sdk

Ref: ID# 166967

Enc: Submitted documents

c: Mr. Patrick M. Sorelle
910 Callahan
Conroe, Texas 77301
(w/o enclosures)