



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 7, 2003

Mr. Gordon Bowman  
Assistant County Attorney  
Travis County Attorney  
P.O. Box 1748  
Austin, Texas 78767

OR2003-0853

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176284.

The Travis County Sheriff's Office (the "sheriff") received a request for all police reports for 2002 from a particular residence. 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 claim and have reviewed the submitted representative sample of information.<sup>1</sup>

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 . . . .

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<sup>1</sup>We assume that the "sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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 . . . .

Gov't Code §§ 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or 552.108(b)(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. You state that portions of the requested records relate to cases that are closed and did not result in conviction or deferred adjudication. However, you do not indicate which of the cases have reached a final result other than conviction or deferred adjudication. Nor is it apparent from the face of the information which cases have reached a result other than conviction or deferred adjudication. Therefore, we find that you have not adequately demonstrated that any of the requested information is excepted from disclosure under section 552.108(a)(2) or (b)(2). Consequently, the sheriff may not withhold any of the submitted information under section 552.108.

You also claim that some information is protected by the common-law right of privacy. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the common-law right to privacy. The common-law right to privacy excepts from disclosure private facts about an individual. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public under common-law privacy when (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See id.* at 685; *see also* Open Records Decision No. 611 at 1 (1992). The types 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. *Id.* at 683. This office has also found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses; *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (types of prescription drugs, illnesses, operations, and physical handicaps). Upon review of the submitted information, we find that some of it is protected under common-law privacy. We have marked this information, which the sheriff must withhold under section 552.101.

We next turn to your claim under chapter 611 of the Health and Safety Code. Section 552.101 also encompasses section 611.002 of the Health and Safety Code, which provides that “[c]ommunications 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.” A “professional” is defined as:

(A) a person authorized to practice medicine in any state or nation;

(B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or

(C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

Health & Safety Code § 611.001(2).

Section 611.004(a) provides specific instances in which a professional may disclose information that is confidential under section 611.002. You state that a portion of the submitted records consist of information subject to chapter 611. However, it does not appear that any of the submitted information consists of communications between a professional and a patient or “records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional.” Therefore, we find that you may not withhold any of the requested information under section 611.002 of the Health and Safety Code.

You further argue that the social security number of an individual contained in the submitted application should be withheld due to privacy concerns. As discussed above, common-law privacy excepts from disclosure information that is both highly intimate and embarrassing, and there is no legitimate public interest in its disclosure. *See Industrial Found.*, 540 S.W.2d at 685. This office has long held that social security numbers are not the type of intimate and embarrassing information protected under common-law privacy. *See Open Records Decision Nos. 622 (1994), 455 (1987), 254 (1980), 169 (1977)*. Thus, the sheriff may not withhold the social security number at issue pursuant to the common-law right to privacy.

However, a social security number may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See Open Records Decision No. 622 (1994)*. These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You state that social security numbers were apparently not obtained pursuant to any such law. Thus, we have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision.

In summary, you must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The remaining requested 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).

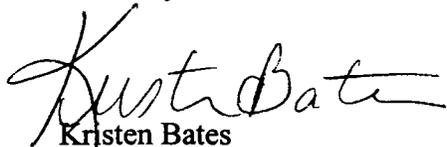
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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 that reads "Kristen Bates". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 176284

Enc. Submitted documents

c: Mr. Albert Byrd  
2109 Muroc Street #101  
Austin, Texas 78757  
(w/o enclosures)