



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2008

Ms. Charlotte Staples  
Taylor, Olson, Adkins, Sralla, Elam L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2008-07643

Dear Ms. Staples:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 313796.

The City of Joshua (the "city"), which you represent, received a request for a copy of the entire file pertaining to a specified police case pertaining to the suicide death of a named individual including the suicide note and shot gun taken in evidence. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you assert that the shot gun requested is not subject to the Act as it is not a document. Public information is defined as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a)(1). Thus, virtually all information in the physical possession of a governmental body consists of public information that is encompassed by the Act. *Id.*; see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). However, the Act states that "[t]he media on which public information is recorded include: paper; film; a magnetic, optical, or solid state device that can store an electronic signal; tape; Mylar; linen; silk; and vellum." *Id.* at 552.002(b). The Act further states that "[t]he general forms in which the media containing public information exist include a book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or

video representation held in computer memory.” *Id.* at 552.002(c). The shot gun does not meet the definition of “media” proscribed in the Act, nor does it record information in any form listed in section 552.002(c). Accordingly, the shot gun is not information subject to the Act and need not be released to the requestor.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). 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 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) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We note that the common-law right to privacy is a personal right that lapses at death, and therefore it does not encompass information that relates to a deceased individual. *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). You state that you have marked information that you believe must be withheld under common-law privacy. However, upon review of the submitted information, we find that none of the information you have marked under common-law privacy constitutes highly intimate or embarrassing information concerning an identifiable living individual. Therefore, none of the information you have marked may be withheld under this exception.

Section 552.101 of the Government Code also encompasses information that other statutes make confidential. Medical records are confidential under the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in 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, other than a person listed in Section 159.004 who is acting on the patient’s behalf, 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). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have marked the records that are subject to the MPA. *See* Occ. Code § 159.001(3).

Medical records must be released on signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See id.* §§ 159.004. When a patient is deceased, as is the case here, medical records pertaining to the deceased patient may only be released upon the signed consent of the deceased's personal representative. *See id.* § 159.005(a)(5). Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). We have marked the medical records in the documents submitted by the city that are confidential under the MPA. The city must not release that information unless it has authorization under the MPA to do so. *See* ORD 598.

The city also claims that the submitted documents include mental health records that are confidential under section 611.002 of the Health and Safety Code. That section provides in 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); *see also id.* § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that is made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, .0045; Open Records Decision No. 565 (1990). We have marked mental health records that the city must withhold under section 611.002, unless the requestor is authorized to obtain that information under section 611.004 or section 611.0045. *See id.* § 611.004(a)(5) (professional may disclose confidential information to patient's personal representative if patient is deceased).

You raise section 552.108(a)(2) for the submitted crime report. Section 552.108(a)(2) of the Government Code exempts from required public 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 claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. 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). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You inform us and the submitted crime report reflects that it relates to a suicide. You also state that the case is closed, and thus the case did not result in a conviction or a deferred adjudication. Based on your representations and our review of the submitted information, we find that section 552.108(a)(2) is applicable in this instance.

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 Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The city must release basic front-page information under section 552.108(c), even if the information does not literally appear on the front page of an offense or arrest report. Basic information under section 552.108(c) includes the name of the complainant and a detailed description of the offense. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Furthermore, because a deceased individual has no right to privacy and the identity of a suicide victim is not protected by common-law privacy under section 552.101 of the Government Code, the city must release the name of the suicide victim as well as all other basic front-page information. The city may withhold the rest of the information in the submitted crime report under section 552.108(a)(2).

Finally, you note that the remaining submitted information contains social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. By its terms, section 552.147 is not applicable to the social security number of a deceased individual. Therefore, the city may only withhold social security numbers pertaining to living persons under section 552.147.<sup>1</sup>

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<sup>1</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary: (1) the city must not release the marked medical records unless it has authorization to do so under the MPA; (2) the city must withhold the marked mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain that information under chapter 611 of the Health and Safety Code; (3) with the exception of basic information, the city may withhold the crime report under section 552.108(a)(2) of the Government Code; and (4) the city may only withhold social security numbers pertaining to living persons under section 552.147 of the Government Code. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Office of the Attorney General 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. 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 'Jessica J. Maloney', with a long horizontal flourish extending to the right.

Jessica J. Maloney  
Assistant Attorney General  
Open Records Division

JJM/jh

Ref: ID# 313796

Enc. Submitted documents

c: Mr. Daniel J. Smith  
6300 Ridglea Place, Suite 617  
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(w/o enclosures)