



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 6, 2009

Mr. Daniel Perez  
Executive Director  
Crisis Center of Comal County  
1547 Common St.  
New Braunfels, Texas 78130

OR2009-09229

Dear Mr. Perez:

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# 346597.

The Crisis Center of Comal County (the "center") received a request for a named individual's notary book from December 11 - 13, 2008. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.138 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information

Initially, we note and you acknowledge, the submitted information is subject to section 406.014 of the Government Code. Chapter 406 of the Government Code is applicable to notaries public. *See* Gov't Code § 406.001 *et seq.* Section 406.014 provides in part:

(b) Entries in the notary's book are public information.

(c) A notary public shall, on payment of all fees, provide a certified copy of any record in the notary public's office to any person requesting the copy.

*Id.* § 406.014(b)-(c). The submitted information is contained in the notary public books of a center employee. This information is expressly made public by section 406.014 of the Government Code. You claim the submitted information is excepted from disclosure under

section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses the doctrine of common-law privacy. Gov't Code § 552.101. However, information that is specifically made public by statute may not be withheld under section 552.101 on the basis of common-law privacy. You also claim the submitted information is excepted from disclosure under section 552.138 of the Government Code. However, information that a statute outside the Act expressly makes public generally may not be withheld from disclosure under an exception contained in the Act. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the center may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy or section 552.138.

However, we note section 552.101 also encompasses the doctrine of constitutional privacy. The constitutional right to privacy protects two types of interests. *See* Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. *Id.* The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common-law right to privacy; the material must concern the "most intimate aspects of human affairs." *See id.* at 5 (citing *Ramie*, 765 F.2d at 492).

We note the submitted information is maintained by a domestic violence shelter that provides services to victims of domestic violence and sexual assault. The submitted information pertains to victims of family violence that used center services for the application of protective orders. After reviewing the information at issue, we find a portion of the submitted information is protected by constitutional privacy and must be withheld under section 552.101.

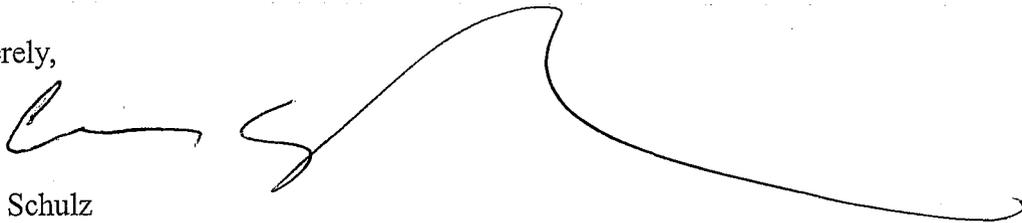
Under the Supremacy Clause of the United States Constitution, the United States Constitution and duly-enacted federal statutes are "the supreme law of the Land," and states have a responsibility to enforce federal law. *See* U.S. Const., art. VI, cl. 2; *Howlett v. Rose*, 496 U.S. 356, 367-69, 110 S.Ct. 2430, 2438-39, 110 L.Ed.2d 332 (1990). As a federal law, constitutional privacy preempts any conflicting state provisions, including section 406.014 of the Government Code. *See Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over

inconsistent provision of state law). Accordingly, we find that, notwithstanding section 406.014 of the Government Code, the information we have marked is confidential pursuant to constitutional privacy and must be withheld under section 552.101 of the Government Code. However, we find that no portion of the remaining information comes within one of the constitutional zones of privacy or involves the most intimate aspects of human affairs. Therefore, no portion of the remaining information may be withheld under section 552.101 on the basis of constitutional privacy. Accordingly, the center must release the remaining information pursuant to section 406.014 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Schulz', with a long, sweeping horizontal stroke extending to the right.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 346597

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)