



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2011

Ms. Heather Stebbins
Assistant City Attorney
City of Kerrville
800 Junction Highway
Kerrville, Texas 78028

OR2011-12035

Dear Ms. Stebbins:

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# 427371.

The Kerrville Police Department (the "department") received a request for all police reports involving patients escaping from or having unauthorized departures from the Kerrville State Hospital (the "hospital") during a specified time period. You claim the submitted incident reports, call for service reports, and dispatch detail reports are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered intimate or 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 some kinds of medical information or

information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Additionally, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. Cf. *U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert the submitted incident reports, call for service reports, and dispatch detail reports are protected by common-law privacy and should be withheld in their entirety because the information pertains to individuals receiving psychiatric treatment. In this instance, however, you have not demonstrated, nor do the submitted reports reflect, the reports involve situations in which the reports must be withheld in their entirety on the basis of common-law privacy. Consequently, the department may not withhold the submitted reports in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim the identifying information of the individuals receiving psychiatric treatment should be withheld under common-law privacy. The submitted reports reflect some of the individuals were committed to the hospital by the court system following crimes committed by those individuals. Although knowledge of those individuals' psychiatric treatment may be highly intimate or embarrassing, we find there is a legitimate public interest in the fact those individuals escaped from court-ordered custody. See *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest in facts tending to support an allegation of criminal activity" (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Therefore, the department may not withhold the identifying information of the criminally court-ordered individuals on the basis of common-law privacy. We note, however, some of the submitted information pertaining to those individuals consists of medical information and compiled criminal history information in which we find there is no legitimate public interest. Furthermore, there is no indication the individuals at issue in the remaining information were committed to the custody of the hospital based on crimes committed by those individuals. Thus, we find there is no legitimate public interest in their identities. Therefore, the department must withhold the medical information, criminal history information, and identifying information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

The remaining information contains Texas driver's license information. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency, or an agency of another state or country, is

excepted from public release.¹ Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(1)). We have marked driver's license numbers and a driver's license class in the remaining information. The department must withhold this information under section 552.130 of the Government Code.²

In summary, the department must withhold the medical information, criminal history information, and identifying information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the driver's license information we have marked under section 552.130 of the Government Code. The department must release the remaining information.³

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, 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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³The remaining information contains social security numbers. 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. Gov't Code § 552.147(b).

Ref: ID# 427371

Enc. Submitted documents

c: Requestor
(w/o enclosures)