



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2012

Ms. Diana Spiller
Research Specialist/Public Information Coordinator
Texas Commission on Jail Standards
P.O. Box 12985
Austin, Texas 78711

OR2012-02772

Dear Ms. Spiller:

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# 446654.

The Texas Commission on Jail Standards (the "commission") received a request for information pertaining to the death of a named inmate at a specified county jail, information pertaining to all other "inmate/detainee injuries or deaths while in custody" of the named county jail, and "inspections or reports pertaining to the standards and policy conformity under the supervision" of the commission. You state you have released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We understand you to raise section 552.101 of the Government Code in conjunction with common-law privacy for the information in Exhibit B. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable

¹Although you raise section 552.101 of the Government Code for the social security number you have marked in Exhibit B, we note section 552.147 is the proper exception to raise.

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 type 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 found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). The common-law right to privacy, however, is a personal right that “terminates upon the death of the person whose privacy is invaded.” *Moore v. Charles B. Pierce Film Enters.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); see also Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Because the information at issue in Exhibit B pertains to a deceased individual, the commission may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy based on the privacy interests of the deceased individual.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. See *id.* §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. See Open Records Decision No. 474 at 4–5 (1987) (section 552.108 may be invoked by any proper custodian of information relating to pending investigation or prosecution of criminal conduct). You state the Falls County Sheriff’s Office objects to release of the information in Exhibit A because it relates to an ongoing criminal investigation into the matter. Based upon this representation and our review, we conclude that release of the information in Exhibit A would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we conclude the commission may withhold the information in Exhibit A pursuant to section 552.108(a)(1) of the Government Code.

You have marked the social security number of the deceased individual in Exhibit B. Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. Gov't Code § 552.147. Thus, this exception is not applicable to the social security number of a deceased individual and the commission may not withhold the social security number you have marked on this basis.

In summary, the commission may withhold the information in Exhibit A pursuant to section 552.108(a)(1) of the Government Code. The commission must release the remaining information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 446654

Enc. Submitted documents

c: Requestor
(w/o enclosures)