



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 2, 2012

Mr. Ryan S. Henry and Ms. Jennafer G. Tallant  
Denton, Navarro, Rocha & Bernal, P.C.  
2517 North Main Avenue  
San Antonio, Texas 78212-4685

OR2012-04717

Dear Mr. Henry and Ms. Tallant:

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# 449389.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district") received a request for all documents released to a named individual in response to his public information request. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the raised exceptions and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you have indicated relates to a concluded case conducted by the district's police department (the "department") that did not result in a conviction or deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is generally applicable to the information at issue.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex.

Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Basic information includes, among other things, the identification and description of the complainant, the premises involved in the incident, the time of occurrence of the incident, and a detailed description of the offense. We note you seek to withhold under section 552.108(a)(2) all of the narrative portion of the submitted report. Consequently, the information being released does not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. See ORD 127. Thus, with the exception of basic information, which must include a detailed description of the offense, the district may withhold the information you have indicated pursuant to section 552.108(a)(2) of the Government Code.

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. 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 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 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).

We find some of the remaining basic information is highly intimate or embarrassing and of no legitimate public concern. Therefore, the district must withhold the basic information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup> However, you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 241.152 of the Health and Safety Code, which states, in relevant part:

- (a) Except as authorized by Section 241.153, a hospital or an agent or employee of a hospital may not disclose health care information about a

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments for this information.

patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.

Health & Safety Code § 241.152(a). Section 241.151(2) of the Health and Safety Code defines "health care information" as "information . . . recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient." *Id.* § 241.151(2). However, the remaining information does not relate to the history, diagnosis, treatment, or prognosis of an identified patient; accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 241.152 of the Health and Safety Code.

You next argue portions of the remaining information are excepted from public disclosure under section 576.005 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses section 576.005, which provides that "[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law." *Id.* § 576.005. Upon review, we find you have failed to demonstrate how any of the department records constitute records of a mental health facility that is subject to section 576.005 of the Health and Safety Code. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on this basis.

You also contend portions of the remaining information are confidential under section 611.002 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses section 611.002, which is applicable to mental health records and provides in pertinent 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.

*Id.* § 611.002(a)-(b); *see also id.* § 611.001 (defining "patient" and "professional"). Upon review, we find none of the information at issue consists of mental health records. Accordingly, the district may not withhold any of this information under section 552.101 of the Government Code on the basis of section 611.002(a) of the Health and Safety Code.

In summary, with the exception of basic information, which must include a detailed description of the offense, the district may withhold the information you have indicated pursuant to section 552.108(a)(2) of the Government Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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

Sincerely,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in black ink and is positioned above the typed name.

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 449389

Enc. Submitted documents

c: Requestor  
(w/o enclosures)