



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2012

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2012-07304

Dear Ms. Byles:

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# 453974.

The Fort Worth Human Relations Commission (the "commission") received a request for a final investigative report and all other documents related to a specified Housing and Urban Development case. You state portions of the requested information will be released to the requestor. You claim portions of the remaining requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have marked the requestor's wife's social security number for redaction. 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. *See* Gov't Code § 552.147(b). However, section 552.023 of the Government Code provides the requestor, as his wife's authorized representative, a special right of access beyond that of the general public, to information concerning his wife that is protected from public disclosure by laws intended to protect her privacy interests. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Section 552.147 protects personal privacy. Therefore, the requestor has a right of access to his wife's social security number under section 552.023 of the Government Code and it may not be withheld from him on the basis of section 552.147 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 611.002 of the Health and Safety Code. Section 611.002 of the Health and Safety Code applies to “[c]ommunications 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.” Health & Safety Code § 611.002; *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See id.* §§ 611.004, .0045; Open Records Decision No. 565 (1990). We have marked mental health records related to the requestor’s wife. The mental health records we have marked, and their duplicates, must be released if the requestor is authorized to obtain the records under sections 611.004 and 611.0045 of the Health and Safety Code. *See* Health & Safety Code § 611.004(a)(4) (professional may disclose confidential information to person who has patient’s written consent).

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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. *See id.* at 683. This office has also 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). You assert portions of the remaining information are protected by common-law privacy. However, as noted above, the requestor is the husband and authorized representative of the individual to whom the requested information pertains and has a special right of access to information concerning his wife. *See* Gov’t Code § 552.023(a); ORD 481. Accordingly, the commission may not withhold any portion of the remaining information from this requestor on the basis of section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).¹ Gov’t Code § 552.137(a)-(c). We note an e-mail address provided to a governmental body on a letterhead is not excepted from disclosure

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

under section 552.137. *See id.* § 552.137(c)(4). The remaining information contains e-mail addresses of members of the public. The commission must withhold the e-mail addresses we have marked, and their duplicates, under section 552.137 of the Government Code unless the owners consent to their release.

In summary, the commission must release the mental health records we have marked if it receives proper authorization for their release under sections 611.004 and 611.0045 of the Health and Safety Code. The commission must withhold the information we have marked under section 552.137 of the Government Code. We have marked the confidential information in only one copy of the records. The commission must withhold the same information from the numerous duplicate copies it submitted to this office. The remaining information must be released.²

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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 453974

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As noted above, the requestor has a right of access to the information being released in this instance that would be confidential with respect to the general public. *See* Gov't Code § 552.023. Accordingly, if the commission receives a request for this same information from a different requestor it must again seek a ruling from this office.