



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 5, 2012

Ms. Meredith L. Kennedy  
Assistant District Attorney  
Wichita County Courthouse  
900 Seventh Street  
Wichita Falls, Texas 76301-2482

OR2012-15956

Dear Ms. Kennedy:

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# 467406.

The Wichita County Sheriff's Office (the "sheriff's office") received a request for the autopsy report of a named individual. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the submitted information consists of an autopsy report that is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is made confidential under this chapter or "other law" or is excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). The completed report must be released pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* § 552.022(a)(1). Although you assert the submitted report is excepted from disclosure under section 552.103 of the Government Code, that exception is discretionary and does not make

information confidential under the Act. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the submitted information may not be withheld under section 552.103 of the Government Code. We note some of the submitted information is subject to section 552.101 of the Government Code, which makes information confidential under the Act.<sup>1</sup> Accordingly, we address the applicability of this section to 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. Section 552.101 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 met. *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. In addition, this office has found 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). Upon review, we find some of the submitted information is highly intimate or embarrassing information pertaining to a living individual, and not of legitimate public concern. Accordingly, the sheriff’s office must withhold the information we have marked under section 552.101 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

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<sup>1</sup>The 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).

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 "Kathleen J. Santos".

Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/eb

Ref: ID# 467406

Enc. Submitted documents

c: Requestor  
(w/o enclosures)