



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2012

Mr. Robert E. Bell
Criminal District Attorney
Jackson County District Attorney's Office
115 West Main, Room 205
Edna, Texas 77957

OR2012-18800

Dear Mr. Bell:

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# 474029.

The Jackson County Sheriff's Office (the "sheriff's office") received a request for the call report and any information pertaining to an incident involving a named individual on a specified date. You claim the submitted information is 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 information protected by other statutes, such as chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) states "[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, are confidential." Health & Safety Code § 611.002(a). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001(b). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). A portion of the submitted information constitutes a mental health record. Therefore, the sheriff's office only may release this mental health record, which we have marked, in accordance with sections 611.004 and 611.0045. *See* Health & Safety Code § 611.004(a)(5) (professional may disclose confidential information to patient's personal representative if patient is deceased).

Section 552.101 of the Government Code 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. *See 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. Upon review, we find the information we have marked and indicated is highly intimate or embarrassing and not of legitimate public interest. Thus, the sheriff's office must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate how any portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the sheriff's office may only release the mental health record we have marked in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. The sheriff's office must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Mr. Robert E. Bell - Page 3

Ref: ID# 474029

Enc. Submitted documents

c: Requestor
(w/o enclosures)