



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 11, 1998

Ms. Cathy Cunningham  
Senior Assistant City Attorney  
City of Irving  
Office of the City Attorney  
P.O. Box 152288  
Irving, Texas 75015-2288

OR98-0680

Dear Ms. Cunningham:

You ask if certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113148

The City of Irving (the "city") received a request for a copy of the 911 tape requesting help with regard to a named individual taken to Irving Healthcare System on a specified date. You submitted to this office for review the responsive audio tape recording of the 911 call pertaining to the individual as well as a patient form. You assert that the information at issue is excepted from disclosure pursuant to section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

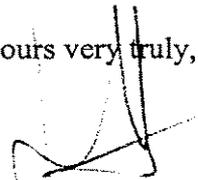
We observe that medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have examined both the patient form and the 911 tape. We conclude that the patient form bearing the signature of the physician or registered nurse accepting the patient is subject to the MPA. However it is not evident from the examination of the 911 tape that it was created or maintained by a physician so it does not fall within the MPA.

Alternately, you suggest that disclosure of the 911 tape would violate the patient's common-law right to privacy. Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

With respect to medical information, common-law privacy does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. Open Records Decision No. 370 (1983). This office has determined that the following information is excepted from disclosure by common-law privacy: the fact that a person broke out in hives as a result of severe emotional distress, Open Records Decision No. 470 (1987), the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987), and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982). *See also* Open Records Decision No. 422 (1984) (regarding emotional or mental distress). We have reviewed the portion of the tape in which the individual calling 911 briefly describes the physical condition of the particular individual which prompted the call to 911. The information is highly intimate or embarrassing. Additionally, we observe that it is not readily apparent that the incident is legitimate concern to the public. We conclude that the tape may be withheld from disclosure under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/alg

Ref.: ID # 113148

Enclosures: Submitted documents

cc: Ms. Diane Smith  
Star-Telegram/Northeast  
3201 Airport Freeway, Suite 108  
Bedford, Texas 76021  
(w/o enclosures)