OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 8, 1999

Mr. Mark A. Flowers
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR99-2878

Dear Mr. Flowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129192.

The City of Midland (the "city") received a request for copies of "any reports made in connection with the incident at Quail Hollow Apartments on or about June 25, 1998." You claim that portions of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, section 772.318 of the Health and Safety Code, and Article 4495b of the Texas Revised Civil Statutes. We have considered the exceptions 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. This section encompasses information protected by other statutes such as section 772.318 of the Health and Safety Code. You claim that section 772.318, one of several confidentiality provisions in chapter 772 of the Health and Safety Code, makes confidential the originating telephone numbers and addresses contained in the documents submitted as "Exhibit B." Because you argue that section 772.318 applies, we assume that the emergency 911 district involved here was established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000.

Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. Health & Safety Code §§772.401 *et seq*. Thus, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318, the originating telephone numbers and addresses on the 911 report contained in Exhibit B are excepted from public disclosure based on section 552.101 as information deemed confidential by statute.

In regard to the documents submitted as "Exhibit C," we find that release of these documents is governed by section 773.091 of the Health and Safety Code as encompassed by section 552.101 of the Government Code. As explained above, section 552.101 encompasses confidentiality statutes such as section 773.091 of the Health and Safety Code. Section 773.091 provides in part:

> (a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.
>
> (b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality "does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services." *Id.* § 773.091(g). We find that the information submitted as Exhibit C constitutes Emergency Medical Services ("EMS") records that are subject to section 773.091.

However, we note that in this case the requestor is the attorney representing the patient. Section 773.092(e)(4) grants to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information" a right of access to the patient's EMS records. Thus, upon receipt of a written consent that conforms with the requirements of section 773.093 of the Health and Safety Code, the city must release the EMS records to the requestor.[1]

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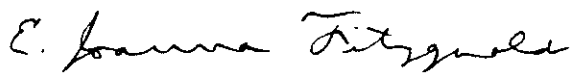
[1]Because we find section 773.091 of the Health and Safety Code, as encompassed by section 552.101 of the Government Code, to be dispositive of this matter, it is unnecessary to address your arguments regarding the Medical Practice Act and common-law privacy.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 129192

Encl: Submitted documents

cc: Ms. Jeannie Smith
Boreland & Boreland
213 N. Main, Ste 101
Midland, Texas 79701
(w/o enclosures)