



November 19, 1999

Ms. Deanie Bostick-Martin  
Records System Supervisor  
Lubbock Police Department  
Records Section  
P.O. Box 2000  
Lubbock, Texas 79457

OR99-3336

Dear Ms. Bostick-Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128966.

The Lubbock Police Department (the "department") received a request for incident report number 98-45279. You assert that the requested information is excepted from public disclosure under section 552.101 of the Government Code. You have submitted the documents at issue to this office for review.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. Section 773.091 of the Health and Safety Code 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.

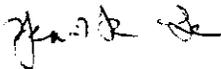
(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential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

considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." See Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

We agree that some of the information in the call report is information protected under the privacy doctrine. We have marked the information that you must withhold under common-law privacy. You must release the remaining information in the call report.

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 any questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/ljp

Ref: ID# 128966

Encl. Marked documents

cc: Ms. Donna Quinn  
Quinn and Quinn, P.C.  
P.O. Drawer 490  
Clovis, New Mexico 88102-0490  
(w/o enclosures)

The call report was created by a peace officer, not a physician or emergency medical services personnel. *See* Health & Safety Code § 773.003(10) (definition of emergency medical services personnel). Thus, the call report is not confidential under section 773.091. The other document is neither a communication by certified emergency medical services personnel or a physician providing medical supervision nor a record of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision. Thus, this other document is not confidential under section 773.091.

However, this other document is a medical record that is confidential under the Medical Practice Act (the “MPA”), article 4495b of Vernon’s Texas Civil Statutes. The MPA protects from disclosure “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” V.T.C.S. art. 4495b, § 5.08(b). Access to medical records is governed by provisions outside the Public Information Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical record submitted to this office for review may only be released as provided by the MPA.

Lastly, we will consider your assertion that the information is excepted from public disclosure by common-law and constitutional privacy for the call report. Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual’s privacy interests against the public’s need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information