



December 11, 2001

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla
Dallas, Texas 75201

OR2001-5772

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155972.

The City of Dallas (the "city") received a request for information pertaining to the firefighters and paramedics who responded to the 7700 block of East R.L. Thornton Freeway on May 29, 2001 and treated a named individual. You state that some responsive information will be released to the requestor. You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that a portion of the information at issue here consists of EMS records. 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. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. Open Records Decision

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

No. 598 (1991). Section 773.091 of the Health and Safety Code, the Emergency Medical Services Act, provides:

(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.

....

(g) The privilege of confidentiality under this section 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. . . .

Section 773.091(b) thus protects from disclosure the submitted EMS records in Exhibit B. *See* Open Records Decision No. 598 (1991). However, information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient is not confidential. Health & Safety Code § 773.091(g).

Section 773.092 of the Health and Safety Code provides for the release of confidential EMS records in certain circumstances. Therefore, if section 773.092 applies, the city must release the EMS records to the requestor. *See* Health & Safety Code §§ 773.092, .093; Open Records Decision No. 632 (1995). Otherwise, the city must withhold the records under section 773.091(b) of the Health and Safety Code in conjunction with section 552.101 of the Government Code, except for information required to be released under section 773.091(g).

We next note that the submitted information includes information that is subject to section 552.022. The information that you submitted to us for review in Exhibit C appears to be a completed report or investigation, which falls into one of the categories of information made expressly public by section 552.022. *See* Gov't Code section 552.022(a)(1). Section 552.022(a)(1) states that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it is excepted under section 552.108 of the Government Code or is expressly confidential under other law. You do not argue section 552.108. You contend that section 552.103 of the Government Code makes this information confidential. However, section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in

general). Thus, the submitted information in Exhibit C may not be withheld from disclosure under section 552.103. Thus, we address only your argument under sections 552.101 and 552.117 for the information in Exhibit C.

You assert that the yellow highlighted portions of Exhibits B, C, and D are exempt from disclosure under section 552.101 in conjunction with the common law right to privacy. Section 552.101 encompasses common law privacy. Common law privacy 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). This office has concluded that financial information concerning an individual is in some instances protected by a common law right to privacy. See Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that "all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 at 3 (1983).

You explain that the yellow highlighted portions of Exhibits B, C, and D consist of the city's five digit personnel identification number and that these numbers are used as the first five digits of a six digit account number at the City Employees Credit Union. You further assert that the release of these personnel identification numbers could give members of the general public access to credit union account records, and therefore, should be excepted under section 552.101 of the Government Code in conjunction with common law privacy. As we believe that no legitimate public interest exists in city employees' credit union account numbers, we conclude that the city must withhold the personnel identification numbers of those employees who are in fact members of the credit union. All remaining identification numbers must be released. We have marked the type of information that you must withhold under section 552.101 for employees who are members of the city's credit union.

You argue that the blue highlighted portions of Exhibits C and D are exempt from disclosure under section 552.117 of the Government Code because they reveal the home telephone number of a current or former government employee or official. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires that the city withhold this information for a current or former employee or official who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). The city may not, however, withhold the information for a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Therefore, if the employee has elected to not allow public access to this information

in accordance with the procedures of section 552.024 of the Government Code and prior to the city's receipt of the present request, we believe that the city must withhold this information from required public disclosure pursuant to section 552.117. We have marked the kinds of information that must be withheld under section 552.117 if the employee timely made the election not to allow public access to the information.

In summary, the city must withhold personnel identification numbers under section 552.101 only when the employee is a member of the city's credit union, and must withhold home telephone numbers, home addresses, social security numbers and information indicating whether an employee has family members under section 552.117 when the employee has timely fulfilled the requirements of section 552.024. The EMS records in Exhibit B must be withheld under section 773.091(b) of the Health and Safety Code in conjunction with section 552.101, except for information required to be released under section 773.091(g).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 155972

Enc. Submitted documents

c: Ms. Connie Piloto
Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)