



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 10, 2004

Mr. Robert R. Ray  
Assistant City Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606-1952

OR2004-1816

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197423.

The City of Longview (the "city") received a request for "all Fire, Police, Haz Mat, [and] EMS reports, photographs, and any other pertinent information regarding" a specified incident. You claim that 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.

You claim that the submitted information is confidential under federal law. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. You claim that the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8, governs some of the submitted information.

At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a

covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office recently addressed the interplay of the Privacy Rule and the Public Information Act (the "Act"). Open Records Decision No. 681 (2004). In that decision, we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted that the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." *See* Open Records Decision No. 681 at 8 (2004); *see also* Gov't Code §§ 552.002, .003, .021. We therefore held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. Open Records Decision No. 681 at 9 (2004); *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the city may withhold requested protected health information from the public only if an exception in subchapter C of the Act applies.

We note that some of the information that you have marked under section 552.101 is subject to section 773.091 of the Health and Safety Code. Section 773.091 addresses certain records regarding emergency medical service ("EMS") and provides in part:

(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.

Health & Safety § 773.091. Subsection 773.091(g) provides, however, that 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).

The submitted information includes EMS records of the identity, evaluation, or treatment of a patient by EMS personnel. We note that none of the exceptions to confidentiality listed in section 773.092 appear to apply in this instance. *See* Health & Safety Code § 773.093 (listing elements of consent for release of EMS records). Thus, we agree that the information we have marked constitutes EMS records and is generally made confidential by section 773.091. However, as noted above, information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of the patients receiving emergency medical services is not confidential under section 773.091 and may not be withheld on that

basis. Because you claim no other exception for such information and it is not otherwise confidential by law, the city must release the listed information from the submitted EMS records. The remaining information in the submitted EMS records must be withheld in accordance with section 552.101 in conjunction with section 773.091.

Some of the submitted information may be subject to section 771.061 of the Health and Safety Code. Section 771.061, which is also encompassed by section 552.101, makes confidential “[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service” and “[i]nformation that is contained in an address database maintained by a governmental entity or a third party used in providing computerized 9-1-1 service.” Health & Safety Code § 771.061(a). You state that “the city provides 9-1-1 service as a ‘home-rule’ municipality” and that the city began doing so “well-before September 1, 1987.” Based on your arguments and our review of the submitted information, it appears that the city operates a computerized 9-1-1 service. *See* Health & Safety § 771.001. Therefore, provided that the city does in fact operate a computerized 9-1-1 service, and to the extent that the submitted information was required to be furnished to the city by a telecommunications service provider or is contained in an address database used in providing computerized 9-1-1 service, the information at issue is confidential under section 771.061 and must be withheld under section 552.101. *See also* Open Records Decision No. 661 at 1-2 (1999). If the city does not operate a computerized 9-1-1 service, or if it does operate such a service but the information at issue was not required to be furnished to the city by a telecommunications service provider and is not contained in an address database used in providing computerized 9-1-1 service, then the information at issue is not excepted from disclosure under section 552.101 in conjunction with section 771.061.

You also contend that the marked “reporting addresses and telephone numbers” may be confidential under section 772.318 of the Health and Safety Code, which is also encompassed by section 552.101. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code apply only to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You state that “the city is not a district created under the authority of chapter 772” but that the city is “located in Gregg and Harrison counties, each of which has a county-wide population that exceeds 20,000.” Based on your arguments, we are unable to determine whether the city is part of a district established under section 772.318. Therefore, we conclude that if the city is part of a district established under section 772.318, then you must withhold originating telephone numbers and addresses of 9-1-1 callers that were furnished by a service supplier under section 552.101. If the city is not part of a district established under section 772.318, then such information may not be withheld under section 552.101 on that basis.

We note that a portion of the submitted information is protected under the doctrine of common-law privacy, which is also encompassed by section 552.101. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. 540 S.W.2d at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the information that the city must withhold under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Other than information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of the patients receiving EMS treatment, the city must withhold the information we have marked under section 552.101 in conjunction with section 773.091 of the Health and Safety Code. If the city operates a computerized 9-1-1 service, and to the extent that the submitted information was required to be furnished to the city by a telecommunications service provider or is contained in an address database used in providing computerized 9-1-1 service, the city must withhold this information under section 552.101 in conjunction with section 771.061 of the Health and Safety Code. If the city is part of an emergency communication district established under section 772.318 of the Health and Safety Code, then the city must withhold originating telephone numbers and addresses of 9-1-1 callers that were furnished by a service supplier under section 552.101 in conjunction with section 772.318. If the information at issue is not confidential under section 771.061 or section 772.318, then it is not excepted from disclosure under section 552.101 and must be released.

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 Dep't of Pub. 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 197423

Enc. Submitted documents

c: Mr. David Justiss  
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(w/o enclosures)