



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2009

Mr. Warren M. S. Ernst
Chief of the General Counsel Division
City of Dallas City Hall
1500 Marilla Street, Room 7BN
Dallas, Texas 75201

OR2009-14333

Dear Mr. Ernst:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 357983.

The City of Dallas (the "city") received a request for the personnel records of a named Emergency Services Technician ("EMT"), as well as policies and procedures regarding employee drug abuse and drug testing. You state the city will release some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the Medical Practice Act ("MPA"). See Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in pertinent part:

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.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is 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.

Id. § 159.002(b), (c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released upon the governmental body's receipt of the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). Upon review, we agree that Exhibit C contains confidential medical records pursuant to section 159.002 of the Occupations Code that must be withheld under section 552.101 of the Government Code.

We note, however, that the requestor is a Department of State Health Services (the "DSHS") investigator who is investigating the EMT at issue. The requestor states that he is requesting investigation records pertaining to the EMT pursuant to chapter 773 of the Health and Safety Code. Section 773.0612 provides that the DSHS or its representative "is entitled to access to records and other documents . . . that are directly related to . . . emergency medical services personnel to the extent necessary to enforce [chapter 773 of the Health and Safety Code] and the rules adopted under [chapter 773 of the Health and Safety Code]." Health & Safety Code § 773.0612(a). The submitted information pertains to an emergency medical technician/paramedic licensed under chapter 773 of the Health and Safety Code. Because the submitted information is directly related to emergency medical services personnel and the requestor is conducting an investigation under chapter 773, we conclude that section 773.0612 applies to the submitted information.

Thus, the instant situation presents a conflict between the MPA and section 773.0612 of the Health and Safety Code. Where information falls within both a general and a specific statutory provision, the specific statutory provision prevails as an exception to the general provision, unless the general provision is the later enactment, and the manifest intent is that the general provision prevail. *See* Gov't Code § 311.026; *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 583

(1990), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

The MPA specifically makes medical records confidential, while section 773.0612 gives a general right of access to all information related to EMS personnel being investigated by the DSHS. *See* Occ. Code § 159.002(a), (b); Health & Safety Code § 773.0612. Therefore, we find that the confidentiality provisions of the MPA are more specific than the access provision of section 773.0612. Although the provisions of the MPA at issue here were enacted prior to the enactment of section 773.0612, because the MPA is the more specific statute, we find the MPA prevails over section 773.0612 and the city may only release the medical records we have marked in accordance with the MPA.

You contend that Exhibit F contains confidential criminal history record information. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* Gov't Code § 411.083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from the DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we conclude that none of the submitted information in Exhibit F consists of confidential CHRI under section 411.083. Therefore, none of this information may be withheld on that basis.

Section 552.101 encompasses section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). You state that Exhibit E contains the originating telephone numbers and addresses of 9-1-1 callers that were furnished by a service provider to a 9-1-1 district subject to section 772.318. Upon review, we determine that the 9-1-1 callers' telephone numbers and addresses you have marked are confidential under section 772.318 of the Health and Safety Code.

However, as noted above, section 773.0612 provides the requestor a statutory right of access to certain information directly pertaining to EMS personnel. In this instance, although

section 773.0612 generally allows the requestor access to information relating to EMS personnel that are being investigated by DSHS, section 772.318 of the Health and Safety Code specifically protects the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. We therefore conclude that, notwithstanding the provisions of section 773.0612, the city must withhold the addresses and telephone numbers you have marked pursuant to section 772.318.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides in relevant part the following:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person

(b) The [department of licensing and regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Occ. Code 1703.306 (a), (b). Section 1703.306(a) makes information acquired from a polygraph examination confidential. We have marked information acquired from a polygraph examination that is confidential pursuant to section 1703.306. In this instance, although section 773.0612 generally allows the requestor access to information relating to EMS personnel that are being investigated by DSHS, section 1703.306 specifically protects information obtained from polygraph examinations. Furthermore, section 1703.306 was enacted after section 773.0612 of the Health and Safety Code.² Thus, we find section 1703.306 of the Occupations Code prevails over section 773.0612 of the Health and Safety Code. Accordingly, the city must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code. However, none of the remaining information in Exhibit D is confidential under section 1703.306 and may not be withheld on that basis.

You claim that a portion of Exhibit B is excepted from disclosure under section 552.130 of the Government Code. This section excepts from public disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130.* Section 552.130 makes information confidential and contains its own release provisions. Thus, section 552.130 is not a general provision under the Act. Additionally, section 552.130 was passed in a later legislative session than

²Act of May 28, 1999, 76th Leg., R.S., ch. 388, § 1, 1999 Tex. Gen. Laws 2267, 2675 (Vernon) (codified as section 1703.306 of the Occupations Code).

section 773.0612.³ Therefore, notwithstanding the access provision of section 773.0612, because section 552.130 is the more specific statute and was enacted later in time, the city must withhold the driver's license information you have marked in Exhibit B, as well as the information we have marked in Exhibit F, under section 552.130 of the Government Code.

In summary, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code. The city must withhold the information you have marked in Exhibit E under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The city must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with 1703.306 of the Occupations Code. The city must withhold the marked information under section 552.130 of the Government Code. The remaining information must be released.⁴

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/eb

³Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (Vernon) (codified as section 552.130 of the Government Code).

⁴We note that because the requestor has a statutory right of access to the information being released in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 357983

Enc. Submitted documents

c: Requestor
(w/o enclosures)