



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2010

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2010-06358

Dear Ms. Sangsvang:

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# 378515 (City of Fort Worth PIR# 2471-10).

The City of Fort Worth (the "city") received a request for any records pertaining to a specified incident.¹ You claim that 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 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." Gov't Code § 552.101. Section 552.101 encompasses 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 are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. You inform us the city is part of an emergency communication district established under section 772.218 of the Health and Safety Code.

¹We note the city received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

You state the telephone number you have highlighted in the submitted incident detail report was provided by a 9-1-1 service supplier. Based on your representations, we conclude the city must withhold the highlighted telephone number under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which makes emergency medical services ("EMS") records confidential. Section 773.091 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.

...

(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.

Health & Safety Code § 773.091(b), (g). Upon review, we find that a portion of the remaining information constitutes EMS records that are generally confidential under section 773.091. We note records that are confidential under section 773.091 may be disclosed 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." *Id.* §§ 773.092(e)(4), .093. Section 773.093 provides that a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and; (3) the person to whom the information is to be released. You state you have not received adequate consent for release of this information. Therefore, the city must withhold the submitted EMS records under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g).

You claim some of the remaining information is confidential on the basis of common-law privacy, which is also encompassed by section 552.101 of the Government Code. The common-law right of privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types 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. *See id.* at 683. In addition, this office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990).

Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. We note, however, the requestor may be the authorized representative of the individual whose privacy interests are at issue. If the requestor is the authorized representative of that individual, she has a special right of access to the information we have marked under section 552.101 in conjunction with common-law privacy and it may not be withheld from her on that basis. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to person to whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). If, however, the requestor is not the authorized representative of that individual, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Upon review, we find that none of the remaining information you have marked is highly intimate or embarrassing information of no legitimate public interest. Accordingly, the remaining information you have marked may not be withheld under section 552.101 in conjunction with common-law privacy.

You state you have redacted certain Texas motor vehicle record information from the remaining information under section 552.130 of the Government Code pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You seek to withhold additional Texas motor vehicle record information, which you state lies beyond the scope of the previous determinations. Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. We note, however, the requestor may be the authorized representative of the individual whose Texas motor vehicle record information is included in the remaining information. Section 552.130 protects privacy interests, and as the owner's authorized representative, the requestor would have a right of access under section 552.023 to the Texas motor vehicle record information you have redacted, and the additional information we have marked, under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Thus, if the requestor is the authorized representative of the individual whose information is at issue, then the Texas motor vehicle record information you have redacted, and the additional

information we have marked, may not be withheld from this requestor. If the requestor is not the authorized representative of that individual, then the Texas motor vehicle record information you have redacted, and the additional information we have marked, must be withheld under section 552.130 of the Government Code.

In summary, the city must withhold the telephone number you have highlighted under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The city must withhold the submitted EMS records under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g). The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor is the authorized representative of the individual whose privacy interests are implicated. The city must withhold the Texas motor vehicle record information you have redacted, and the additional information we have marked, under section 552.130 of the Government Code, unless the requestor is the authorized representative of the individual whose Texas motor vehicle record information is at issue. The remaining information must be released.²

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

²We note the requestor may have a special right of access to some of the submitted information. *See* Gov't Code § 552.023(a). However, because such information may be confidential with respect to the general public, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office.

Ref: ID# 378515

Enc. Submitted documents

cc: Requestor
(w/o enclosures)