



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2010

Ms. Michelle M. Fraga
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2010-14988

Dear Ms. Fraga:

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# 395468 (C.A. File No. 10GEN1454).

The Harris County Sheriff's Office (the "sheriff") received a request for the 9-1-1 call and dispatch transcripts pertaining to a specified incident. You claim that the submitted information is 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 information protected by other statutes, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides, in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

- (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(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded 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). Although you generally claim the submitted 9-1-1 recording and call records are subject to the MPA because they describe the physical conditions of at least one of the people involved in the incident and the medical response to the incident, we find none of this information was created by a physician or taken directly from records created or maintained by a physician. Therefore, none of the submitted information may be withheld on the basis of the MPA.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter 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 an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. These sections only protect the originating addresses and telephone numbers of individuals who actually called 9-1-1.

Although you raise section 772.318 for the telephone numbers and addresses of the 9-1-1 caller you have highlighted in the submitted computer-aided dispatch ("CAD") report, we understand Harris County to contain a population of more than two million so as to fall within the scope of section 772.118. We note section 772.118 only applies to information furnished by a 9-1-1 service supplier. *See* Health & Safety Code § 772.118(a). Therefore, to the extent the telephone numbers and addresses you marked in the CAD reports are the originating telephone numbers and addresses supplied by a 9-1-1 service supplier, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. However if the marked telephone numbers and addresses were not provided by a 9-1-1 service supplier, this information may not be withheld under section 552.101 in conjunction with section 772.118.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) 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. *Id.* at 683. We note the right of privacy is a personal right that lapses at death; thus, information may not be withheld on the basis of the privacy interests of a deceased individual. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981).

You raise section 552.101 in conjunction with common-law privacy for the submitted 9-1-1 recording. We note, and you acknowledge, this recording pertains to an individual who is deceased; therefore, none of the submitted recording may be withheld under common-law privacy based on the privacy interests of the deceased victim. You assert, however, that in this instance, the 9-1-1 recording also relates to the privacy interests of the deceased individual's father, as the recording contains the father's "raw reaction" upon discovering his child. We find that although some or all of the recording at issue may be intimate or embarrassing, there is a legitimate public interest in the recording since it documents the discovery of a deceased individual who died of unknown causes. Accordingly, we conclude none of the submitted 9-1-1 recording is protected under common-law privacy, and the sheriff may not withhold it under section 552.101 of the Government Code on that basis.

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[.]" *Id.* § 552.130(a)(1), (2). We note, however, the driver's license or license plate issuing state does not constitute motor vehicle record information for purposes of section 552.130. We find the sheriff must withhold the information we have marked under section 552.130.¹ However, we find none of the remaining information constitutes Texas motor vehicle information. Consequently, the sheriff may not withhold any of the remaining information on the basis of section 552.130.

In summary, to the extent the telephone numbers and addresses you marked in the CAD reports are the originating telephone numbers and addresses supplied by a 9-1-1 service supplier, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. The sheriff must

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

withhold the information we have marked under section 552.130 of the Government Code. 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 395468

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information to be released contains the requestor's Texas driver's license number, class, expiration date, and restriction information, all of which are generally confidential under section 552.130 of the Government Code. Because this exception was enacted to protect a person's privacy, the requestor has a right of access to her own Texas motor vehicle information under section 552.023(a) of the Government Code. *See Gov't Code § 552.023(a)* (person has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). If the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.