



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2011

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2011-00729

Dear Mr. Bounds:

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# 406103.

The City of Corpus Christi (the "city") received a request for city Fire Department, Code Compliance, Planning and Development Review, and Health and Human Services records related to a specified address.¹ You state some information will be made available to the requestor. You claim 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.

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. This section encompasses information made confidential by other statutes, such as section 773.091 of the Health & Safety Code. Section 773.091 provides in relevant part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision

¹You state the city sought and 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 inform us the city received the present request on October 1, 2010. You state the city provided the requestor with an estimate of charges on October 14, 2010. *See* Gov't Code §§ 552.2615, .263(a). You further inform us the city received a deposit from the requestor on October 26, 2010; thus, that is the date on which the city is deemed to have received the present request. *Id.* § 552.263(e).

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). The term "patient" is not defined for the purposes of section 773.091 of the Health and Safety Code. When a word used in a statute is not defined and that word is "connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art." Gov't Code § 312.002; *see also Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 485 (Tex. 1998). Taber's Cyclopedic Medical Dictionary defines "patient" as "one who is sick with, or being treated for, an illness or injury; [or] . . . an individual receiving medical care." Taber's Cyclopedic Medical Dictionary 1446 (17th ed. 1989). We also note that other statutes dealing with medically related professions generally define patient as an individual who consults a health care professional. *See* Health & Safety Code § 611.001 (mental health records), Occ. Code §§ 159.001 (physician records), 201.401 (chiropractic records), 202.401 (podiatric records), 258.101 (dental records). Upon review, we agree most of the submitted information constitutes emergency medical services ("EMS") records subject to Chapter 773 of the Health & Safety Code. 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. You state the requestor has not provided the required written consent. Accordingly, we conclude that the city must withhold the EMS records we have marked pursuant to section 552.101 of the Government Code in conjunction with section 773.091 of the Health & Safety Code, except as specified by section 773.091(g), unless it receives the required consent for the release of the information. We note that the remaining submitted report appears to be a city fire department incident report that does not reflect the identity, evaluation or treatment of a patient. Upon review, we find that the remaining report does not constitute an EMS record of the identity, evaluation, or treatment of a patient for the purposes of section 773.091. Therefore, the city may not withhold the remaining report under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

Section 552.101 of the Government Code also incorporates 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate or 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. In addition, this office has found that medical information or information indicating disabilities or specific illnesses is 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). Upon review, we find the information you have marked, as well as the information we have marked, in the remaining report is highly intimate or embarrassing and not of legitimate public interest. Thus, this marked information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the EMS records we have marked pursuant to section 552.101 of the Government Code in conjunction with section 773.091 of the Health & Safety Code, except as specified by section 773.091(g), unless it receives the required consent for the release of the information. The city must also withhold the information you have marked, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 406103

Enc. Submitted documents

c: Requestor
(w/o enclosures)