



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2011

Mr. Tyler Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-05525

Dear Mr. Wallach:

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# 415010 (Fort Worth PIR No. W005873).

The Fort Worth Fire Department (the "department") received a request for all records relating to a specified incident, including the 911 tape/dispatch report, the fire department's call and incident reports, and any EMS records pertaining to the incident. You state the department has released some information to the requestor. You state you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the department 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 also state you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ 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 claimed exceptions and reviewed the submitted information.

We first note, and you acknowledge, the department did not meet its procedural obligations

¹ Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

under section 552.301 of the Government Code in requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. See Gov't Code § 552.301(b). Pursuant to section 552.301(e), within fifteen business days of receiving the request the governmental body must submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. See *id.* § 552.301(e). You inform us the department received the instant request for information on December 21, 2010, and the department was closed on December 24 and 31, 2010. Thus, the department's ten-business-day deadline fell on January 6, 2011, and the fifteen-business-day deadline fell on January 13, 2011. You did not submit the required information until February 11, 2011. Thus, we find the department failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information. See Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because you raise sections 552.101 and 552.130, which constitute compelling reasons to withhold information for purposes of section 552.302, we will consider your arguments under those sections.

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 protected by other statutes, such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.218 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 860,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. See Open Records Decision No. 649 (1996). You state the department is part of an emergency communication district that is subject to section 772.218 of the Health and Safety Code. You state the information you have marked in the submitted Incident Detail Report was provided by a 9-1-1 service supplier. Based on your representations, we conclude the department must withhold the telephone number you have marked under section 552.101 of the Government Code in conjunction with

section 772.218 of the Health and Safety Code. However, you have also marked the name of the 9-1-1 caller. The plain language of section 772.218 states, and this office has determined, confidentiality only applies to originating telephone numbers and the addresses associated with those numbers. *See* Health & Safety Code § 772.218(a), (c); Open Records Decision Nos. 649 at 3 (language of confidentiality provision controls scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Therefore, the caller name you have marked may not be withheld under this section.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which makes confidential the records of the provision of emergency medical services ("EMS"). This section provides, in relevant part:

(b) Records of the identity, evaluation, or treatment of a patient by [EMS] personnel or by a physician providing medical supervision that are created by the [EMS] personnel or physician or maintained by an [EMS] 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). Therefore, except for the information specified in section 773.091(g), EMS records are confidential under section 773.091 and may be released only in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.093. You state a portion of the submitted information constitutes records of the identity, evaluation, or treatment of a patient by emergency medical services personnel. You also state the records were created by EMS personnel and are maintained by an EMS provider. Based on your representations and our review, we agree the information we have marked constitutes EMS records that are subject to chapter 773 of the Health and Safety Code. We note records that are confidential under section 773.091(b) 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). 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. *See id.* § 773.093. In this instance, the requestor provides written consent from his client, the parent of the minor purported patient. However, the records at issue do not identify the patient being treated. Thus, we rule conditionally. If the records at issue do not pertain to the child at issue, then with the

exception of the information described in section 773.091(g), which is not confidential, the department must withhold the EMS records we have marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. However, if the records do pertain to the child at issue, the department must release the records to this requestor if the requestor complies with section 773.093.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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 met. *Id.* at 681-82. This office has found financial information that does not relate to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989). Upon review, we find the information you have marked constitutes personal financial details that are not of legitimate public interest. We have marked additional financial information that is not of legitimate public interest. Therefore, the department must withhold the information you and we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1)-(2). Therefore, the department must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the telephone number marked by you under section 552.101 in conjunction with section 772.218 of the Health and Safety Code. If the EMS records marked by us do not pertain to the child at issue, then except for information subject to section 773.091(g), the department must withhold them under section 552.101 in conjunction with section 773.091(b) of the Health and Safety Code. The department must also withhold the information marked by you and us under section 552.101 in conjunction with common-law privacy and section 552.130. The remaining information must be released to the requestor.

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,

A handwritten signature in cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID # 415010

Enc. Submitted documents

c: Requestor
(w/o enclosures)