



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2011

Ms. Loren B. Smith
Olson & Olson, L.L.P.
For the City of Humble
2727 Allen Parkway, Wortham Tower, Suite 600
Houston, Texas 77019

OR2011-10114

Dear Ms. Smith:

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# 423979.

The City of Humble (the "city"), which you represent, received a request for emergency medical services dispatch records and any related police reports concerning a named individual and two specified events. You claim 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. This exception encompasses information made confidential by other statutes, such as section 773.091 of the Health and Safety Code. This section 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.

Health & Safety Code § 773.091(b). Section 773.091 applies to records of the provision of emergency medical services ("EMS"). *See* Open Records Decision No. 632 (1995). Upon

review, we find the city has not established the submitted information constitutes EMS records of the identity, evaluation or treatment of patients that were created by EMS personnel or a physician or that are maintained by an EMS provider. *See id.* § 773.091(b); *see also* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). We therefore conclude the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

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 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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the requestor knows the identity of the individual involved, as well as the nature of the incident in event report 09-0503-0073. Thus, in this instance, we find the release of event report 09-0503-0073 would implicate the individual's common-law right of privacy. Therefore, in order to protect the individual's privacy, the city must withhold event report 09-0503-0073, which we have marked, in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Furthermore, we find portions of the remaining information, which we have marked, are highly intimate or embarrassing and not of legitimate public interest. Thus, the city must also withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate how any other portions of the remaining information you have marked are highly intimate or embarrassing and not of legitimate public interest. Therefore no other portions of the remaining information you have marked may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;

- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). You must withhold the vehicle identification number you have marked under section 552.130 of the Government Code. However, you have failed to demonstrate how any of the remaining information you have marked constitutes motor vehicle record information for the purposes of section 552.130. Therefore, the city may not withhold any other portions of the remaining information you have marked under section 552.130 of the Government Code.

In summary, the city must withhold event report 09-0503-0073, which we have marked, in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the portions of information we have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the vehicle identification number you have marked under section 552.130 of the Government Code. As you raise no further exceptions to disclosure, 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/em

Ref: ID# 423979

Enc. Submitted documents

c: Requestor
(w/o enclosures)