



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2011

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-16102

Dear Ms. McClellan:

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# 435057 (DPD Request No. 2011-7338).

The Dallas Police Department (the "department") received a request for complaints against a named officer, including any background or internal investigation information. You claim some of the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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 section 611.002 of the Health and Safety Code, which provides in part:

¹We assume that the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate, or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that section 611.002 makes confidential only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). Upon review, we find the information we marked constitutes mental health records that are confidential under section 611.002. Thus, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 611.002(a) of the Health and Safety Code.²

Section 552.101 of the Government Code also encompasses section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand the City of Dallas to be part of an emergency communication district that was established under section 772.318. You have marked the telephone number and address of a 9-1-1 caller the department seeks to withhold. We conclude the department must withhold the marked telephone number and address under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, to the extent they consist of the originating telephone number and address that were furnished by a service supplier. If the marked telephone number and address are not the originating telephone number and address provided by a service supplier, the marked information may not be withheld under section 552.101 in conjunction with section 772.318.

We note you have also raised section 552.101 of the Government Code in conjunction with section 773.092 of the Health and Safety Code. However, you have not identified any information you wish to withhold under this statute, and we note none of the remaining information is subject to this statute. Accordingly, this ruling does not address this argument.

²As our ruling for this information is dispositive, we need not address your claim under section 159.002 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy 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 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. Upon review, we find most of the information you have marked, as well as the additional information we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, with the exception of the information we have marked for release, the department must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We find the remaining information you have marked is not highly embarrassing or intimate information with no legitimate public interest. This information, which we have marked for release, may not be withheld under section 552.101 in conjunction with common-law privacy.

We note a portion of the remaining information is subject to section 552.130 of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state, another state, or country is excepted from public release. 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). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 611.002(a) of the Health and Safety Code; (2) the marked telephone number and address under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, to the extent they consist of the originating telephone number and address that were furnished by a service supplier; (3) the information you have marked, as well as the additional information we have marked, with the exception of the information we have marked for release, under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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# 435057

Enc. Submitted documents

c: Requestor
(w/o enclosures)