



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2011

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2011-18407

Dear Ms. Byles:

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# 439105 (Fort Worth PIR No. W011982).

The City of Fort Worth (the "city") received a request for a specified case file. You claim that 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 protected by other statutes, such as section 773.091 of the Health and Safety Code, which 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.

...

(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). Upon review, we agree a portion 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 the city must withhold the Out of Hospital Care Report 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 the city receives the required consent for the release of the information.¹

Although you also raise section 552.101 of the Government Code in conjunction with section 773.091 for the incident detail report, we note this report is a computer aided dispatch incident detail report and not an EMS record. Further, you do not explain how any of this information was taken from an EMS record. Therefore, we find that the incident detail report does not fall within the scope of section 773.091, and the city may not withhold this information under section 552.101 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 if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. 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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are 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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure for this information.

review, we agree a portion of the remaining information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You also seek to withhold the originating telephone numbers and addresses of 9-1-1 callers contained in the submitted information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. In Open Records Letter No. 2011-15641 (2011), we granted a previous determination authorizing the city to withhold originating telephone numbers of 9-1-1 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 in conjunction with section 772.218. *See* Open Records Decision No. 673 at 7-8 (2001). Furthermore, in Open Records Letter No. 2011-15956 (2011) we granted a previous determination authorizing the city to withhold an originating address of a 9-1-1 caller furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 in conjunction with section 772.218. Therefore, the city must withhold any such telephone numbers and addresses contained in the submitted information pursuant to Open Records Letter Nos. 2011-15641 and 2011-15956. We note, however, that one of the telephone numbers you seek to withhold is a callback number and not an originating telephone number supplied by a 9-1-1 service supplier. This information is not confidential under section 772.218 and may not be withheld under section 552.101.

In summary, the city must withhold the Out of Hospital Care Report 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 the city receives the required consent for the release of the information. The city must also withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Finally, the city must withhold the originating telephone numbers and addresses of 9-1-1 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code pursuant to Open Records Letter Nos. 2011-15641 and 2011-15956. 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,

A handwritten signature in cursive script, appearing to read "Michelle R. Garza". The signature is written in dark ink and is positioned above the typed name.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

Ref: ID# 439105

Enc. Submitted documents

c: Requestor
(w/o enclosures)