



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 30, 2012

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

OR2012-01485

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# 443835.

The City of Fort Worth (the "city") received a request for all information relating to the assistance provided by the city's fire department to a named United States Postal Service ("USPS") employee on August 29, 2011. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your claimed exception 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. Section 552.101 encompasses the doctrine of common-law privacy. Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). This office has found that some kinds of 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). Common-law privacy does not, however, protect all medically-related information. *See* Open Records Decision No. 478 (1987). Individual determinations are

required. *See* Open Records Decision No. 370 (1983). In this instance, you assert the records must be withheld in their entirety to protect the patient's medical privacy. However, after reviewing your arguments, we find you have failed to demonstrate the records are protected in their entirety under common-law privacy.

Section 552.101 also encompasses section 773.091 of the Health and Safety Code, which 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 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). Except for the information specified in section 773.091(g), emergency medical services ("EMS") records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. Some of the records reflect the treatment of a patient by EMS personnel. Accordingly, we find some of the information at issue constitutes EMS records that are confidential under section 773.091(b) of the Health and Safety Code.

Section 773.092 of the Health and Safety Code states, however, that confidential EMS records may be disclosed to governmental agencies if the disclosure is required or authorized by law. *See id.* § 773.092(e)(2). In this instance, the requestor states he is a federal law enforcement agent with the USPS Office of Inspector General. The requestor further explains he is conducting an authorized investigation and is seeking the requested records in accordance with the Inspector General Act of 1978 (the "IG Act"), 5 U.S.C. app. 3. Section 6 of the IG Act provides:

(a) In addition to the authority otherwise provided by this [IG] Act, each Inspector General, in carrying out the provisions of this [IG] Act, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this [IG] Act;

...

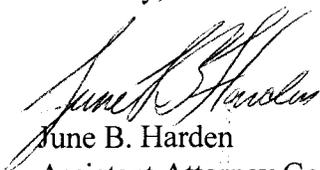
(3) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this [IG] Act from any Federal, State, or local governmental agency or unit thereof[.]

5 U.S.C. app. 3 § 6(a)(1), (3). Based on the requestor's representations and our review, we find section 773.092(e)(2) of the Health and Safety Code and subsections (a)(1) and (a)(3) of section 6 of the IG Act grant the requestor a statutory right of access to the submitted EMS records. Furthermore, to the extent the remaining records contain any medical information that would be subject to common-law privacy, we find the requestor's statutory right of access under the IG Act preempts the patient's privacy rights. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, we conclude the submitted records must be released to this requestor in their entirety.<sup>1</sup>

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](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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/bs

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<sup>1</sup>Because some of the submitted information is generally excepted from disclosure under the Act, the city should seek another determination if it receives another request for this information.

Ref: ID# 443835

c: Requestor  
(w/o enclosures)