



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2012

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2012-03356

Dear Mr. Bounds:

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# 448718 (ORR# 31).

The City of Corpus Christi (the "city") received a request for information pertaining to a specified gas leak. You state the city has provided some of the requested information to the requestor, with some information redacted under section 552.130(a)(2) of the Government Code pursuant to the previous determination in Open Records Decision No. 684 (2009).¹ You claim some of 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, including section 773.091 of the Health and Safety Code, which is applicable to certain information related to the provision of emergency medical services ("EMS"). Section 773.091 provides in relevant part as follows:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130(a)(2) of the Government Code, without the necessity of requesting an attorney general decision.

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), 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.* §§ 773.091-773.094.

You state the submitted information contains documents that are maintained by the city's fire department and reflect the treatment of patients by EMS personnel. Based on your representation and our review, we agree this information, which you have marked, constitutes EMS records that are subject to chapter 773 of the Health and Safety Code.

As you acknowledge, however, 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), 773.093. Section 773.093 provides 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. You state the requestor "has not . . . submitted adequate written consent of the patients or other persons authorized to act on the patients' behalf." Thus, with the exception of the information subject to section 773.091(g), which is not confidential and must be released, the marked EMS records may be released only if the city receives proper written consent in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-773.093.

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 are excepted from required public disclosure under common-law privacy. *E.g.*, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Some of the

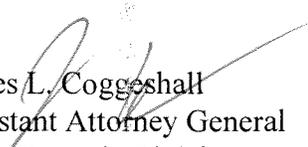
submitted information is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the city must withhold the information you have marked, as well as the information we have marked, under section 552.101 in conjunction with common-law privacy.

To conclude, the city must withhold the submitted EMS records you have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except for the information subject to section 773.091(g), which must be released. The city must also withhold the information marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 448718

Enc. Submitted documents

c: Requestor
(w/o enclosures)