



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 15, 2012

Ms. Elaine Nicholson  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2012-07193

Dear Ms. Nicholson:

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# 452251.

The City of Austin (the "city") received a request for information pertaining to a specific emergency medical services ("EMS") call. 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 representative sample of information.<sup>1</sup> We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

As you acknowledge, the city failed to meet the statutory deadline imposed by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex.

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<sup>1</sup>We assume the "representative sample" of records 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 those records contain substantially different types of information than that submitted to this office.

App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider its applicability to the information at issue.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 of the Government Code 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), 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. Upon review, we find some of the information we have marked consists of EMS records that are confidential under section 773.091(b) of the Health and Safety Code.

We note the requestor claims the EMS records at issue fall into an exception to confidentiality pursuant to section 773.092(a)(5) of the Health and Safety Code. This section provides:

(a) Exceptions to the confidentiality or privilege in court or administrative proceedings exist:

...

(5) when the proceeding is a disciplinary investigation or proceeding against emergency medical services personnel conducted under this chapter, provided that the department shall protect the identity of any patient whose medical records are examined, unless the patient is covered under Subdivision (1) or has submitted written consent to the release of the patient's emergency medical services records under Section 773.093[.]

*Id.* § 773.092(a)(5). The requestor argues that the information at issue is excepted from confidentiality because it pertains to a disciplinary investigation of EMS personnel and the action is currently being appealed through the city's appeal process. However, you note the subsection raised by the requestor is applicable to proceedings conducted "under this chapter" and provides direction to "the department" regarding patient protections. *See id.* § 773.003(7) (defining "department" as the Department of State Health Services). You note section 773.061 outlines the disciplinary actions available to the department. *See id.* § 773.061. You state section 773.061 and section 773.092(a)(5) apply only to the Department of State Health Services, and the city has no authority to conduct disciplinary proceedings pursuant to chapter 773. Thus, you state, and we agree, the investigation conducted by the Austin/Travis County Emergency Medical Service System ("A/TCEMS") is not a proceeding as described by section 773.092(a)(5). Therefore, section 773.092(a)(5) is not applicable to the information at issue. Thus, except for the information specified in section 773.091(g), the city must withhold the EMS records, which we have marked, under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

Section 552.101 also encompasses section 773.095 of the Health and Safety Code. Section 773.095 provides in relevant part:

(a) The proceedings and records of organized committees of hospitals, medical societies, emergency medical service providers, emergency medical services and trauma care systems, or first responder organizations relating to the review, evaluation, or improvement of an emergency medical services provider, a first responder organization, an emergency services and trauma care system, or emergency medical services personnel are confidential and not subject to disclosure by court subpoena or otherwise.

...

(c) This section does not apply to records made or maintained in the regular course of business by an emergency medical services provider, a first responder organization, or emergency medical services personnel.

Health & Safety Code § 773.095(a), (c). You state the submitted information consists of records of the A/TCEMS Professional Practices and Standards Division which is a subsection of the Office of Medical Director Clinical Quality Control Committee, an emergency medical services system. You further state the submitted information consists of records that were reviewed by the A/TCEMS Professional Practices and Standards Division to evaluate the performance of EMS personnel in their performance as an emergency medical service provider. Based on your representations and our review we find that portions of the submitted information, which we have marked, constitute records relating to the review, evaluation, or improvement of an emergency medical services provider, a first responder organization, an emergency medical services and trauma care system, or emergency medical services personnel. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.095 of the Health and Safety Code. However, we find that the remaining submitted incident reports were made in the regular course of business. Thus, this information may not be withheld under section 773.095.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. The type of information considered highly 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 also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the remaining information contains information that is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information may be excepted from disclosure under section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). We note that section 552.117 encompasses a personal

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

cellular telephone number, provided that a governmental body does not pay for the cell phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. Therefore, if the individuals whose information we have marked timely requested confidentiality under section 552.024, the city must withhold the marked information pertaining to them under section 552.117(a)(1) of the Government Code; the city may only withhold the individuals' cellular telephone numbers if they pay for the cellular telephone service with their own funds. If the individuals whose information is at issue did not make a timely election under section 552.024, the city may not withhold the information at issue under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. *See id.* § 552.137(c). The e-mail addresses we have marked are not excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.<sup>3</sup>

In summary, except for the information specified in section 773.091(g), the city must withhold the EMS records we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.095 of the Health and Safety Code. The city must withhold the information we have marked under section 552.101 of the Government Code in

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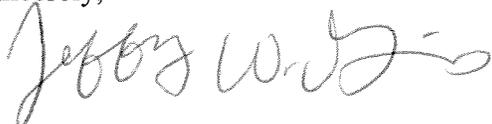
<sup>3</sup>This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

conjunction with common-law privacy. The city must withhold the personal telephone number we have marked and the cellular telephone numbers we have marked under section 552.117 of the Government Code to the extent the cellular telephone numbers are personal cellular telephone numbers paid for with personal funds and the employees made a timely election. The city must withhold the email addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure. 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](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,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 452251

Enc. Submitted documents

c: Requestor  
(w/o enclosures)