



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2012

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78569-9277

OR2012-08076

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# 454792 (City File No. 220).

The City of Corpus Christi (the "city") received a request for nine categories of information pertaining to a specified traffic accident involving a named individual, including information pertaining to damages and injuries. You state you will make some of the responsive information available to the requestor for review. We note you have redacted social security numbers pursuant to section 552.147 of the Government Code¹ and e-mail addresses subject to section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).² 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

¹ Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. Gov't Code § 552.147(b).

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Code § 552.101. This section encompasses information protected by other statutes such 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. 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. 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 that the submitted information contains records documenting emergency medical services provided to a patient by EMS personnel, and these records are maintained by an EMS provider. Upon review, we agree that some of the submitted information constitutes EMS records that are subject to chapter 773 of the Health and Safety Code. You state that the requestor has not submitted adequate written consent of the patient or another person authorized to act on the patient’s behalf. Accordingly, except for the information specified by 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 of the Health and Safety Code. However, we find the city has failed to demonstrate how any of the remaining information at issue constitutes EMS records for the purposes of section 773.091 of the Health and Safety Code. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses information protected by the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)–(c). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released on receipt of the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). Upon review, we find the information we have marked constitutes confidential medical records subject to the MPA. You state the requestor has not submitted adequate written consent of the patient or another person authorized to act on the patient's behalf that complies under this chapter. Accordingly, the city must withhold the information marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find the city has failed to demonstrate how any of the remaining information constitutes medical records for the purposes of the MPA. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses information protected by section 201.402 of the Occupations Code, which provides in part the following:

(a) Communications between a chiropractor and a patient relating to or in connection with any professional services provided by a chiropractor to the patient are confidential and privileged and may not be disclosed except as provided by this subchapter.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a chiropractor that are created or maintained by a chiropractor are confidential and privileged and may not be disclosed except as provided by this subchapter.

(c) A person who receives information from the confidential communications or records, excluding a person listed in Section 201.404(a) who is acting on the patient's behalf, may not disclose the information except to the extent that

disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 201.402(a)-(c). Chiropractic records must be released on the patient's signed, written consent, provided that the consent specifies: (1) the information records covered by the release; (2) the reason or purpose for the release; and (3) the person to whom the information is to be released. *See id.* §§ 201.404, .405. Upon review, we find some of the submitted information, which we have marked, constitutes chiropractic records. You state the requestor has not submitted adequate written consent of the patient or another person authorized to act on the patient's behalf that complies with this chapter. Accordingly, the city must withhold the information marked under section 552.101 of the Government Code in conjunction with section 201.402 of the Occupations Code. However, we find the city has failed to demonstrate how any of the remaining information constitutes chiropractic records for the purposes of section 201.402 of the Occupations Code. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 201.402 of the Occupations Code.

Section 552.101 of the Government Code 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. In addition, 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. *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 review, we find the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find the city has failed to demonstrate how the remaining information at issue is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, except for the information specified by section 773.091(g) 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 773.091 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 the MPA, section 201.402 of the Occupations Code, and common-law privacy. 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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/eb

Ref: ID# 454792

Enc. Submitted documents

c: Requestor
(w/o enclosures)