



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

August 6, 2012

Mr. Jay A. Cantrell  
For City of Iowa Park  
719 Scott Avenue, Suite 616  
Wichita Falls, Texas 76301-2610

OR2012-12278

Dear Mr. Cantrell:

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# 461041.

The Iowa Park Fire Department (the "department"), which you represent, received a request for the 911 and EMT reports related to two specified calls. You claim 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." Section 552.101 encompasses 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 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 find the submitted information constitutes EMS records. We note, 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. Among the individuals authorized to act on the patient’s behalf in providing written consent is a “personal representative” if the patient is deceased. *Id.* § 773.093. Section 773.093 provides a consent for release of EMS records must specify the following: (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. *Id.* You explain the requestor is the mother of the deceased individual and the mother-in-law of the surviving individual. However, you state the requestor has not provided the department with adequate written consent. Thus, with the exception of the information subject to section 773.091(g), the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, unless it receives proper consent. *See id.* §§ 773.091–773.093.

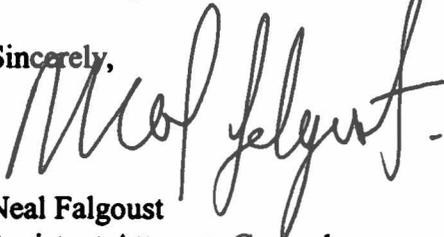
We understand you to raise section 552.101 of the Government Code for the information subject to section 773.091(g). Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would 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. We note because the common-law right to privacy is a personal right that lapses at death, common-law privacy does not protect information that relates only to a deceased individual. Accordingly, information pertaining solely to the deceased individual may not be withheld on common-law privacy grounds. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Attorney General Opinions JM-229 (1984), H-917; Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Upon review, we find none of the remaining information is highly intimate or embarrassing. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the information subject to section 773.091(g), which the department must release, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, unless it receives proper consent.

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,

A handwritten signature in black ink, appearing to read "Neal Falgoust", written over a horizontal line.

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 461041

Enc. Submitted documents

c: Requestor  
(w/o enclosures)