



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2013

Mr. Warren M.S. Ernst
Chief of the General Counsel Division
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2013-00301

Dear Mr. Ernst:

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# 475255.

The Dallas Police Department (the "department") received a request for all 9-1-1 calls, reports, and e-mails related to a specified address or 9-1-1 call. You state some information will be released to the requestor. 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." Gov't Code § 552.101. This exception encompasses information other statutes make confidential, such as section 773.091 of the Health and Safety Code, which is applicable to emergency medical services ("EMS") records, and provides in part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(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.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(a)-(c). This confidentiality "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." *Id.* § 773.091(g). Upon review, we agree the information in Exhibit B constitutes an EMS record maintained by an EMS provider documenting services provided to a patient by EMS personnel and, therefore, the information is generally confidential under section 773.091. *See id.* § 773.003(8) (defining "emergency medical services" for the purposes of chapter 773 of the Health and Safety Code). Accordingly, the information in Exhibit B is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g). You also assert the submitted 9-1-1 recordings are confidential under section 773.091. However, you have failed to demonstrate how any of the recordings constitute records of the identity, evaluation, or treatment of a patient created by EMS personnel or a physician providing medical supervision or maintained by an EMS provider. Accordingly, no portion of the submitted 9-1-1 recordings 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 the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The type 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. *See 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. *See Open Records Decision Nos. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982).* Upon review, we find portions of the submitted audio recordings in Exhibit C are highly intimate or embarrassing and not of legitimate public interest. You claim the department lacks the technical capability to redact the information at issue from the submitted audio recordings.

However, because the department had the ability to copy the submitted audio recordings in order to submit the requested information for our review, we believe the department has the capacity to produce a copy of only the non-confidential portions of the submitted audio recordings. Therefore, we find the department must withhold the information in the audio recordings in Exhibit C we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the information in Exhibit B under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g) of the Health and Safety Code. The department must also withhold the information in the audio recordings in Exhibit C we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information in the audio recordings.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 475255

Enc. Submitted documents

c: Requestor
(w/o enclosures)