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August 21, 2013

Ms. Donna L. Johnson  
Counsel for the City of Cleveland  
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2727 Allen Parkway, Suite 600  
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OR2013-14614

Dear Ms. Johnson:

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# 497017 (City Reference No. COC13-003).

The City of Cleveland (the "city"), which you represent, received a request for information pertaining to a named individual. You state you will redact driver's license numbers pursuant to section 552.130 of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You state release of the requested information may implicate the interests of third parties. Accordingly, you state and

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, the Texas legislature recently amended section 552.130 to allow a governmental body to redact the information described in subsection 552.130(a)(2) of the Government Code without the necessity of seeking a decision from the attorney general. Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e). Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684. Therefore, a governmental body may redact information subject to subsection 552.130(a)(2) only in accordance with section 552.130, not Open Records Decision No. 684. 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 a decision from this office under the Act. *Id.* § 552.147(b).

provide documentation showing, you notified these third parties of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). 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." *Id.* § 552.101. Section 552.101 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. This office has found that 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 No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouses files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find the present request seeks information in which the named individual is not depicted as a suspect, arrestee, or criminal defendant. Thus, we conclude this request does not require the city to compile the named individual's criminal history and does not implicate the named individual's right to privacy. However, we find the information we have marked is highly intimate or embarrassing information of no legitimate public concern. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We find the remaining information is not highly intimate or embarrassing information of no legitimate public concern. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.101 of the Government Code encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000.

Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

We understand the city is part of an emergency communication district established under section 772.318. You indicate the telephone number and address you have marked to be withheld under section 772.318 are the originating telephone number and address of a 9-1-1 caller. Provided the telephone number and address you have marked were furnished by a service supplier, the city must withhold the telephone number and address under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, if the 9-1-1 caller's telephone number and address were not furnished by a service supplier, then this information may not be withheld under section 552.101 in conjunction with section 772.318 and must be released.

Section 552.101 of the Government Code also 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 the remaining information does not consist of EMS records subject to chapter 773. Thus, the remaining information may not be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See Occ. Code* §§ 151.001-168.202. Section 159.002 of the MPA provides, in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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.

*Id.* § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find the remaining information does not consist of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created by a physician. Therefore, the remaining information may not be withheld under section 552.101 in conjunction with the MPA.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the telephone number and address you have marked were furnished by a service supplier, the city must withhold the telephone number and address under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 497017

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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