



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 18, 2014

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

OR2014-14470

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# 534961.

The Austin Fire Department (the "department") received a request for records and documents pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor agrees to the redaction of the originating telephone numbers and addresses of any 9-1-1 callers. Accordingly, we find this information is not responsive to the request. This ruling does not address the public availability of any information that

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<sup>1</sup>You acknowledge, and we agree, the department did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nonetheless, sections 552.101, 552.130 and 552.136 of the Government Code are mandatory exceptions that can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the department's claims.

is not responsive to the request, and the department is not required to release such information in response to the request.

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. Section 552.101 encompasses information made confidential by other statutes, such as 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. *See id.* The information we have marked consists of records made and maintained by EMS personnel; thus, we find section 773.091 is applicable to the information at issue. Accordingly, with the exception of the information subject to section 773.091(g), which is not confidential and must be released, the department must withhold the EMS records we have marked under section 552.101 in conjunction with section 773.091(b).<sup>2</sup> However, we find section 773.091 does not apply to any portion of the remaining information, and the department may not withhold this information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540

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<sup>2</sup>This ruling does not affect an individual’s right of access to a patient’s EMS records from the EMS provider. *See* Health & Safety Code §§ 773.092, .093; *cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (Medical Practice Act does not provide patient general right of access to his or her medical records from governmental body responding to request for information under Public Information Act).

S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. In this instance, the requestor is the authorized representative of two of the individuals whose privacy interests are at issue. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the requestor has a right of access to information pertaining to his clients that would otherwise be confidential under common-law privacy, and this information may not be withheld from him. Upon review, we find the information we have marked under common-law privacy that does not belong to the requestor's clients satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. *See* Gov't Code § 552.130(a)(1)-(2). We note this exception protects personal privacy. For much of the information you marked, the requestor is the authorized representative of the individuals whose information is at issue. Therefore, the requestor has a right of access under section 552.023 of the Government Code to his clients' motor vehicle record information, and the department may not withhold that information under section 552.130 of the Government Code. *See generally id.* § 552.023; ORD 481 at 4. The department must withhold the motor vehicle record information we have marked, which pertains to an individual other than the requestor's clients, under section 552.130 of the Government Code.

Section 552.136 of the Government Code states "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). We note section 552.136 also protects privacy interests. In this instance, the requestor is an authorized representative of the individuals to which the information at issue pertains. Accordingly, the requestor has a right of access to this information pursuant to

section 552.023 of the Government Code, and the department may not withhold the information under section 552.136 of the Government Code. *See generally id.* § 552.023; *see* ORD 481 at 4.

In summary, the department must withhold (1) the EMS records we have marked under section 552.101 in conjunction with section 773.091 of the Health and Safety Code, except for information subject to section 773.091(g), which is not confidential and must be released; (2) the information we marked have under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining responsive information to the requestor.

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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/ac

Ref: ID# 534961

Enc. Submitted documents

c: Requestor  
(w/o enclosures)