



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2014

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

OR2014-15150

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# 534962.

The City of Austin (the "city") received a request for information pertaining to a specified incident. The city claims the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the claimed exception 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 section encompasses information other statutes make confidential. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You indicate that the emergency communication district involved here is subject to section 772.318. Therefore, we agree the city must withhold

¹You acknowledge, and we agree, the city did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nonetheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason 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 city's claim.

the 9-1-1 originating phone number and address you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in part the following:

(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.

...

(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(a)-(b), (g). The remaining information contains records made and maintained by emergency medical services personnel. Upon review, we find section 773.091 is applicable to this information, which we have marked. Thus, with the exception of the information subject to section 773.091(g), which is not confidential under section 773.091, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. However, the remaining information does not contain 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. *See id.* § 773.091(a). It also does not contain a record of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that was created by the emergency medical services personnel or physician or maintained by an emergency medical services provider. *See id.* § 773.091(b). Accordingly, the remaining information is not confidential under section 773.091, and the city may not withhold it under section 552.101 of the Government Code on that ground.

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

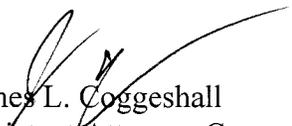
publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, we find some of the submitted information, which we have marked and indicated, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked or indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

To conclude, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. With the exception of the information subject to 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(b) of the Health and Safety Code. The city must also withhold the information we have marked or indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.

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, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 534962

Enc. Submitted documents

c: Requestor
(w/o enclosures)