



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2014

Ms. Sarah R. Martin
Assistant City Attorney
Legal Division
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2014-19953

Dear Ms. Martin:

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# 542148 (Dept. Ref. No. 16736).

The Arlington Police Department (the "department") received a request for information pertaining to a specified case number. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted information pertaining to portions of the request. Thus, to the extent information responsive to the remaining portions of the request exists and was maintained by the department on the date it received the request, we assume the department has released it to the requestor. If the department has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions

¹Although you raise section 552.101 of the Government Code in conjunction with common-law privacy, you have not submitted arguments explaining how common-law privacy applies to the submitted information. Therefore, we assume you have withdrawn this claim. See Gov't Code §§ 552.301, .302.

apply to requested information, it must release information as soon as possible under circumstances).

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 made confidential by other statutes, such as section 550.065 of the Transportation Code. This section provides, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) of the Transportation Code, however, requires the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has not provided the department with the requisite information specified by the statute. Accordingly, the department must withhold the submitted CR-3 crash report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which provides, in 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.* Exhibit C contains records made and maintained by EMS personnel. Upon review, we find section 773.091 is applicable to the information at issue. Thus, with the exception of the information subject to section 773.091(g), which is not

confidential, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.²

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. The MPA provides, in pertinent 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.

Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See Open Records Decision Nos. 487 at 3-4 (1988), 370 at 2 (1983), 343 at 1 (1982).* Upon review, we find you have not demonstrated any of the remaining information is confidential under the MPA; as such, none of the remaining information may be withheld under section 552.101 on that basis.

In summary, the department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. With the exception of the information subject to section 773.091(g), which is not confidential and must be released, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

A handwritten signature in cursive script, appearing to read "Lee Seidlits".

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 542148

Enc. Submitted documents

c: Requestor
(w/o enclosures)