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ATTORNEY GENERAL OF TEXAS

July 28, 2016

Mr. Ryan D. Pittman
Counsel for the City of Frisco
Abernathy Roeder Boyd & Hullett P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2016-16999

Dear Mr. Pittman:

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# 620553.

The City of Frisco (the "city"), which you represent, received a request for a patient care report related to a specified incident. 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 some of the submitted information, which we marked, is not responsive to the first request for information because it was created after the department received the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this 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 section 773.091 of the Health and Safety Code, which provides, in relevant part:

¹Although you also raise section 552.023 of the Government Code, we note section 552.023 is not an exception to disclosure under the Act. *See* Gov't Code § 552.023 (person has right of access to information about self that is protected by laws protecting person's privacy interest).

(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 service (“EMS”) records are deemed confidential under section 773.091. *See id.* § 773.091. Upon review, we find the submitted information consists of EMS records subject to chapter 773. 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 submitted information under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.² Although you seek to withhold the information subject to section 773.091(g) under the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, we note EMS records are subject to section 773.091, not the MPA. *See id.*; *see also* Open Records Decision No. 598 (1991).

You argue the information subject to section 773.091(g) of the Health and Safety Code is protected by common-law privacy. 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. We note the common-law right to privacy is a personal right that “terminates upon the death of the person whose privacy is invaded.” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 652I (1977))); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon

²As our ruling is dispositive, we need not address the city’s remaining arguments against disclosure of this information.

death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Therefore, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find the city failed to demonstrate any of the information subject to section 773.091(g) of the Health and Safety Code is highly intimate or embarrassing and of no legitimate public interest. Accordingly, none of this information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of the information subject to section 773.091(g), which must be released, the city must withhold the submitted EMS records under section 552.101 of the Government Code in conjunction with section 773.091(b) 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.

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/eb

Ref: ID# 620553

Enc. Submitted documents

c: Requestor
(w/o enclosures)