



December 5, 2000

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P. O. Box 850137
Mesquite, Texas 75187-0137

OR2000-4598

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141827.

The City of Mesquite (the "city") received a request for police records pertaining to a specified address for a specified period of time. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that portions of the submitted information are made confidential by section 159.002 of the Occupations Code. The Medical Practice Act (the "MPA"), found at Subtitle B of Title 3 of the Occupations Code, governs records of the treatment of a patient by a physician. Section 159.002(b) states:

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.

The documents submitted to this office consist of incident reports and patrol supplement reports, not records created or maintained by a physician. Therefore, none of the submitted information may be withheld pursuant to section 159.002.

You also mention chapter 773 of the Health and Safety Code. Chapter 773, the Emergency Medical Services Act, governs access to information demonstrated to comprise a record of emergency medical services provided. Section 773.091 of the Health and Safety Code provides, in part:

(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.

You do not inform us, and it is not apparent to this office, that any of the submitted information constitutes communications “between certified emergency medical services personnel or a physician providing medical supervision and a patient.” Nor does any of the submitted information appear to be a record “of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision.” Therefore, the city may not withhold any of the submitted information pursuant to chapter 773.

You also claim that chapter 161 of the Health and Safety Code may except the information as “relating to mental health records.” We assume that you intended to refer to chapter 611 of the Health and Safety Code. Section 611.002 protects from disclosure only mental health records created or maintained by a mental health professional. Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. None of the submitted information appears to have been created or maintained by a mental health professional. The city may not withhold any information under chapter 611.

In addition, you assert that sections 771.061 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of “any person making a 911 call.” However, section 771.061(a) of the Health and Safety Code only makes confidential certain information that telephone companies and the United States Postal Service furnish to a governmental entity that provides computerized 911 emergency services. *See generally* Open Records Decision No. 661 (1999). Section 772.318 of the Health and Safety Code makes confidential the originating telephone numbers and addresses of 911 callers that are furnished by a 911 service supplier. *See* Open Records Decision No. 649

(1996). The city must withhold any phone numbers and addresses in the submitted information that were furnished *by such a service supplier*.

Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.101 also encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Industrial Foundation*, 540 S.W.2d at 683; *see* Open Records Decision Nos. 339 (1982), 205 (1978). Additionally, this office has found that the following type of information is excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the information that you must withhold under common law privacy and section 552.101. (See yellow tag).

Finally, you assert that section 552.130 of the Government Code excepts some of the submitted information from disclosure. Section 552.130 provides in relevant part:

- (a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license numbers under section 552.130.

In summary, the city must withhold the information we have marked as excepted from required disclosure by common law privacy under section 552.101 and must withhold the phone numbers and addresses of 911 callers that were furnished by a 911 service supplier, under section 552.101 in conjunction with sections 771.061 and 772.318 of the Health and Safety Code. The city must withhold the Texas driver's license numbers under section 552.130. The city may be required to withhold the social security numbers under section 552.101 in conjunction with federal law. The city must release the remaining requested information to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 141827

Encl. Submitted documents

cc: Mr. Hubert Phil Isaaks
9801 Walnut Street, Apartment 307-A
Dallas, Texas 75243
(w/o enclosures)