



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2016

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2016-27104

Dear Ms. Armstrong:

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# 636924.

The Dallas Police Department (the "department") received a request for a specified internal affairs file. We understand you will withhold the originating telephone number of a 9-1-1 caller pursuant to Open Records Letter No. 2011-17075 (2011).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.136 of the Government Code.² We have also received and considered comments submitted by the

¹In Open Records Letter No. 2011-17075, this office issued a previous determination to the department authorizing it to withhold the originating telephone number of a 9-1-1 caller furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code without requesting a decision from this office.

²We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.101, 552.1175, and 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note the requestor asserts the department has previously released the submitted video recordings. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See id.* § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold any information that was previously released unless its release is expressly prohibited by law or the information is confidential by law. However, the department claims sections 552.101, 552.1175, and 552.136 of the Government Code. Because these sections can make information confidential under the Act, we will consider the applicability of these exceptions to any information that was previously released. Further, to the extent the submitted information was not previously released, we will address the department's arguments against disclosure.

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 of the Government Code encompasses section 773.091 of the Health and Safety Code. Section 773.091 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.

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), EMS records are deemed confidential and may be released only in accordance with chapter 773 of the Health & Safety Code. *See id.* §§ 773.091, .094.

Upon review, we find the information we have marked constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, this information constitutes EMS records that are subject to chapter 773 of the Health and Safety Code. Accordingly, except for information subject to section 773.091(g), which is not confidential under section 773.091, the EMS records we marked must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. 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* Health & Safety Code § 773.091; *see also* Open Records Decision No. 598 (1991).

Section 552.101 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 conclude the information we have marked meets 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. Furthermore, we note portions of the submitted video recordings contain information that is confidential under common-law privacy. We understand the department lacks the technical capability to redact this information from the recordings. Therefore, we conclude the department must withhold the video recordings we have marked in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.⁴

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected,

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Furthermore, we understand the employee identification numbers you have marked are used in conjunction with one additional digit to access employee credit union bank accounts. We therefore conclude the department must withhold the employee identification numbers you have marked under section 552.136 of the Government Code.

In summary, provided the originating telephone number of the 9-1-1 caller at issue was furnished by a service supplier established in accordance with chapter 772, the department must withhold the telephone number you have marked in accordance with the previous determination issued in Open Records Letter No. 2011-17075. Except for the information subject to section 773.091(g) of the Health and Safety Code, the department 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 department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the employee identification numbers you have marked under section 552.136 of the Government Code. The remaining information must be released.

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,



April Philley
Assistant Attorney General
Open Records Division

AP/akg

Ref: ID# 636924

Enc. Submitted documents

c: Requestor
(w/o enclosures)