



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 5, 2017

Mr. Stephen D. Gates
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2017-07098

Dear Mr. Gates:

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# 652029 (Midland ID # M019862-011717).

The Midland Police Department (the "department") received a request for all information pertaining to a specified incident involving a named individual. We understand the department is withholding some information pursuant to the previous determinations issued in Open Records Letter Nos. 2015-23311 (2015) and 2016-04310 (2016).¹ You state the department has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹Open Records Letter No. 2015-23311 is a previous determination issued to the City of Midland (the "city") authorizing it to withhold the originating telephone numbers of 9-1-1 callers furnished to it 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. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Open Records Letter No. 2016-04310 is a previous determination issued to the city authorizing it to withhold the originating addresses of 9-1-1 callers furnished to it 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. *See id.*

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses section 773.091 of the Health and Safety Code, which provides, in relevant part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services [(“EMS”)] personnel or by a physician providing medical supervision that are created by the [EMS] personnel or physician or maintained by an [EMS] 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 [EMS].

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091. Upon review, we find Exhibit B constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, except for the information subject to section 773.091(g), the department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

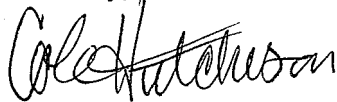
Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. 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 or 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 the information we have marked and indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold the remaining information under section 552.101 of the Government Code on that basis.

In summary, except for the information subject to section 773.091(g) of the Health and Safety Code, the department must withhold Exhibit B 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 and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 652029

Enc. Submitted documents

c: Requestor
(w/o enclosures)