



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 24, 2017

Mr. Thomas A. Gwosdz
City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2017-08664

Dear Mr. Gwosdz:

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# 654629.

The City of Victoria (the "city") received a request for Emergency Medical Services ("EMS") and city fire department records related to a specified incident. You state the city has provided 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.

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 information made confidential by statute, such as section 181.006 of the Health and Safety Code, which provides the following:

[F]or a covered entity that is a governmental unit, an individual's protected health information:

- (1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2)(A) defines “covered entity” to include any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2)(A). You do not inform us the city is a covered entity for purposes of section 181.006 of the Health and Safety Code. Therefore, we find you have failed to demonstrate any of the submitted information is subject to section 181.006 of the Health and Safety Code, and thus, the city may not withhold any information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides, in part:

(a) A communication between certified [EMS] 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.

...

(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.

Id. § 773.091(a)-(b), (g). The submitted information consists of records made and maintained by EMS personnel. Upon review, we find section 773.091 is applicable to the submitted information. Thus, with the exception of the information subject to section 773.091(g), which is not confidential and must be released, 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.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/nmd

Ref: ID# 654629

Enc. Submitted documents

Requestor
(w/o enclosures)