



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 5, 2017

Mr. Ryan D. Pittman  
Counsel for the City of Frisco  
Abernathy Roeder Boyd Hullett  
1700 Redbud Boulevard, Suite 300  
McKinney, Texas 75070-1210

OR2017-09674

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# 656445.

The Frisco Fire Department (the "department"), which you represent, received a request for information pertaining to the medical treatment of a named individual during a specified time. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 773.091 of the Health and Safety Code, which 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.

Health & Safety Code § 773.091(b), (g). The information we marked consists of records made and maintained by emergency medical services (“EMS”) personnel. Accordingly, we find section 773.091 is applicable to the information at issue. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.<sup>1</sup> However, we find the remaining information does not consist of records of the identity, evaluation, or treatment of patients by EMS personnel or a physician providing medication supervision that were created by the EMS personnel or a physician or maintained by an EMS provider. *See id.* § 773.091(b). Thus, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 773.091 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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.).

Upon review, the remaining information contains a public citizen’s date of birth. However, the requestor may be the authorized representative of the individual at issue and may have a right of access to information pertaining to the individual that would otherwise be confidential under common-law privacy. *See Gov’t Code* § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held

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<sup>1</sup>This ruling does not affect an individual’s right of access to a patient’s EMS records from the EMS provider. *See Health & Safety Code* §§ 773.092, .093; *cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (Medical Practice Act does not provide patient general right of access to his or her medical records from governmental body responding to request for information under Public Information Act).

by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of the individual at issue, then the department may not withhold the date of birth from this requestor under section 552.101 on the basis of common-law privacy. If the requestor is not acting as the authorized representative of the individual at issue, the department must withhold the public citizen's date of birth under section 552.101 in conjunction with common-law privacy. Further, upon review, we find the department has failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the information subject to section 773.091(g) of the Health and Safety Code, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. If the requestor is not acting as the authorized representative of the individual at issue, the department must withhold the public citizen's date of birth under section 552.101 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](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,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MJC/sb

Ref: ID# 656445

Enc. Submitted documents

c: Requestor  
(w/o enclosures)