



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2017

Ms. Shannon C. Francis
Assistant County Attorney
Williamson County Attorney's Office
405 Martin Luther King Street #7
Georgetown, Texas 78626

OR2017-16052

Dear Ms. Francis:

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# 666599.

Williamson County (the "county") received a request for records pertaining to a specified incident. You state you have released some information. 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 of the Government Code encompasses section 773.091 of the Health and Safety Code. Section 773.091 of the Health and Safety Code is applicable to records of the provision of emergency medical services and 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.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(b)-(c). Upon review, we agree the submitted information consists of records made and maintained by emergency medical services personnel. However, we note the information at issue reveals the individual concerned was deceased when emergency medical services personnel arrived. The term "patient" is not defined for the purposes of section 773.091 of the Health and Safety Code. When a word used in a statute is not defined and that word is "connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art." Gov't Code § 312.002; *see also Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 485 (Tex. 1998). Taber's Cyclopedic Medical Dictionary defines "patient" as "one who is sick with, or being treated for, an illness or injury; [or] . . . an individual receiving medical care." Taber's Cyclopedic Medical Dictionary 1446 (17th ed. 1989). We also note other statutes dealing with medically-related professions generally define "patient" as an individual who consults a health care professional. *See* Health & Safety Code § 611.001 (mental health records); Occ. Code §§ 159.001 (physician records), 201.401 (chiropractic records), 202.401 (podiatric records), 258.101 (dental records). Thus, because the generally accepted medical definition of patient indicates the term refers to a living individual, we find the term does not encompass information that concerns a deceased individual. Accordingly, we conclude section 773.091 of the Health and Safety Code is not applicable to the submitted information and the county may not withhold this information under section 552.101 on that basis.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). However, because "the right of privacy is purely personal[.]" that right "terminates upon the death of the person whose privacy is invaded[.]" *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) ("action

for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 6521)); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Therefore, information that pertains to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find you have not demonstrated any of the submitted information is highly intimate or embarrassing to a living individual, or the information is of legitimate public concern in this context. Thus, the county may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the county must release the submitted information to this requestor.

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,



D. Michelle Case
Attorney
Open Records Division

DMC/sdk

Ref: ID# 666599

Enc. Submitted documents

c: Requestor
(w/o enclosures)