



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2017

Ms. T. Trisha Dang
Assistant City Attorney
City of Sugar Land
P. O. Box 110
Sugar Land, Texas 77487-0110

OR2017-27961

Dear Ms. Dang:

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# 687169 (W002805).

The City of Sugar Land (the "city") received a request for information pertaining to a specified incident.¹ 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. This section encompasses section 773.091 of the Health and Safety Code, which provides, in relevant part:

¹We note the city sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(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 the information at issue 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), which must be released, the city must withhold the information you marked 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 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 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.).

Upon review, we find some of the submitted information, which we have marked and indicated, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor is the spouse of the individual whose information is at issue and may be this individual’s authorized representative. In that instance, the requestor has a right of access to the information pertaining to her spouse 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 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 her spouse, then the city may not withhold the information at

issue under section 552.101 on the basis of common-law privacy. If the requestor is not acting as her spouse's authorized representative, then the city must withhold the information we have marked and indicated under section 552.101 in conjunction with common-law privacy. However, in either case, we find the remaining information is not highly intimate or embarrassing information or is of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note portions of the remaining information are subject to section 552.130 of the Government Code.² Section 552.130 provides information relating to a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code §552.130(a)(2). We note section 552.130 protects privacy interests and the information at issue pertains to the requestor's spouse. As noted above, the requestor may be acting as her spouse's authorized representative, and may have a right of access to information pertaining to her spouse that would otherwise be confidential. *See id.* § 552.023; *see* ORD 481 at 4. Accordingly, if the requestor is acting as the authorized representative of her spouse, then the city may not withhold the information we have marked under section 552.130. If the requestor is not acting as her spouse's authorized representative, then the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information you 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, then the city must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle information we have marked under section 552.130 of the Government Code. The city 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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Pounds', written in a cursive style.

Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 687169

Enc. Submitted documents

c: Requestor
(w/o enclosures)