



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 2, 2019

Mr. L. Brian Narvaez
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2019-00032

Dear Mr. Narvaez:

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# 744464 (ORR Nos. P009267 & P009606).

The McKinney Police Department (the "department"), which you represent, received two requests from different requestors for information pertaining to a specified incident.¹ You state you will release some of the requested information. You state the department will redact public citizens' dates of birth pursuant to Open Records Letter No. 2018-07366 (2018).² You also state the department will withhold motor vehicle record information

¹We note the department sent the requestors cost estimates of charges pursuant to section 552.2615 of the Government Code, and the requestors accepted the cost estimates. *See* Gov't Code § 552.2615. The estimate of charges required the requestors to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The department informs us it received the required deposits on October 5, 2018, and October 29, 2018. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

²Open Records Letter No. 2018-07366 authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

pursuant to section 552.130(c) of the Government Code.³ You state some of 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 “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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 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). Except for the information specified in section 773.091(g), emergency medical services (“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), the department must withhold Exhibit B-1 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

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

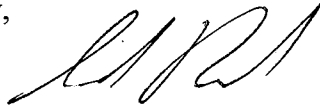
highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information you indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information you indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, except for the information subject to section 773.091(g), the department must withhold Exhibit B-1 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 you 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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/mo

Ref: ID# 744464

Enc. Submitted documents

c: 2 Requestor
(w/o enclosures)

REF ID # 744464

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