



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2019

Mr. Gabriel A. Rodriguez
Assistant City Attorney
City of Corpus Christi
PO Box 9277
Corpus Christi, Texas 78469-9277

OR2019-00663

Dear Mr. Rodriguez:

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# 745524 (City File No. 1279).

The City of Corpus Christi (the "city") received a request for information pertaining to a specified incident. 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:

(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 submitted information 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 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.¹

We understand you seek to withhold the information subject to section 773.091(g) of the Health and Safety Code pursuant to the Medical Practices Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which governs the release of medical records. Section 552.101 of the Government Code also encompasses section 159.002 of the Occupations Code, which provides, in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find you have not demonstrated the information subject to section 773.091(g) is confidential under the MPA. Accordingly, the city may not withhold the information subject to section 773.091(g) under section 552.101 of the Government Code 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

¹As our ruling is dispositive, we need not address your arguments against disclosure of this information.

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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We understand you to argue the information subject to section 773.091(g) of the Health and Safety Code is protected by common-law privacy. Upon review, we find none of the information subject to section 773.091(g) is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city may not withhold this 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), which 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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/mo

Ref: ID# 745524

Enc. Submitted documents

c: Requestor
(w/o enclosures)