



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 25, 2020

Mr. Victor M. Cristales
Counsel for the City of Frisco
Abernathy, Roeder, Boyd, & Hullett, P.C.
P.O. Box 1210
McKinney, Texas 75069-1210

OR2020-16552

Dear Mr. Cristales:

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# 834551.

The City of Frisco (the "city"), which you represent, received a request for the medical records of a named individual. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 part, the following:

(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 at issue contains records of the identity, evaluation, or treatment of a patient made and maintained by emergency medical services personnel. Thus, section 773.091 is applicable to this information, which we have marked. Therefore, with the exception of the information subject to section 773.091(g) of the Health and Safety Code, which is not confidential under section 773.091, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. However, the remaining information is not confidential under section 773.091, and the city may not withhold it under section 552.101 of the Government Code on that ground.

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 the *Industrial Foundation* decision. *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). Upon review, we find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the city must withhold the information we have marked 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, which the city must release, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The city must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open

Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/be

Ref: ID# 834551

Enc. Submitted documents

c: Requestor
(w/o enclosures)