



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 8, 2020

Ms. T. Trisha Dang
Senior Assistant City Attorney
City of Sugar Land
2700 Town Center Boulevard North
Sugar Land, Texas 77479

OR2020-25349

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# 850806.

The City of Sugar Land (the "city") received a request for information pertaining to a specified event. You claim portions of the submitted information are 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 information protected by other statutes, such as section 773.091 of the Health and Safety Code, which provides, in part:

- (a) A communication between certified emergency medical services [(“EMS”)] personnel or a physician providing medical supervision and a patient that is made in the course of providing [EMS] to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) Records of the identity, evaluation, or treatment of a patient by [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 emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. Upon review, we find some of the submitted information constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Accordingly, with the exception of information subject to section 773.091(g), which is not confidential, 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). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we marked under section 552.101 in conjunction with common-law privacy. However, the city has failed to demonstrate any portion of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Thus, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of information subject to section 773.091(g), which is not confidential, 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. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,

Melanie Villars
Assistant Attorney General
Open Records Division

MJV/jm

Ref: ID# 850806

Enc. Submitted documents

c: Requestor
(w/o enclosures)