



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 29, 2022

Mr. Nico Arias  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, Third Floor  
Fort Worth, Texas 76102

OR2022-36708

Dear Mr. Arias:

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# 987820 (ORR# R006744).

The City of Fort Worth (the "city") received a request for records related to a specified incident involving 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 exception the city claims and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 information protected by 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 emergency medical services 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 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(a)-(b), (g). A portion of the submitted information consists of an EMS report that was made and maintained by EMS personnel. Upon review, we find section 773.091 is applicable to this information. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the city must withhold the submitted EMS report under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. However, we find the remaining information does not consist of communications between certified emergency medical services personnel providing medical supervision and patients that were made in the course of providing emergency medical services to the patients. *See id.* § 773.091(a). Furthermore, the remaining information does not consist of records of the identity, evaluation, or treatment of patients by emergency medical services personnel providing medical supervision that were created by the emergency medical services personnel or maintained by an emergency medical services provider. *See id.* § 773.091(b). Accordingly, we find section 773.091 does not apply to any portion of the remaining information, and the city may not withhold the remaining information 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 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. However, because “the right of privacy is purely personal[.]” that right “terminates upon the death of the person whose privacy is invaded[.]” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting Restatement (Second) of Torts § 6521)); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Therefore, information that pertains solely to a deceased individual may not be withheld under section 552.101 of the Government Code on the basis of that individual’s privacy interest. We note the individual to whom the information at issue relates is now deceased.

Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of the information subject to section 773.091(g), the city must withhold the submitted EMS report under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety 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 <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,

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/mo

Ref: ID# 987820

Enc. Submitted documents

c: Requestor  
(w/o enclosures)