



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 26, 1995

Mr. Tom Bullion  
City Attorney  
City of Taylor  
P.O. Box 810  
Taylor, Texas 76574

OR95-1141

Dear Mr. Bullion:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 36270.

The City of Taylor (the "city") received an open records request for a tape recording of a 911 call requesting medical assistance from EMS personnel. You explain that upon determining that the 911 call was medical in nature, the city police department transferred the call to the Williamson County Emergency Medical Service but continued to record the telephone conversation on the police department's "tape record backup system." You contend the requested information is confidential under section 773.091 of the Health and Safety Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code (former section 3(a)(1)), which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Section 773.091(b) of the Health and Safety Code provides:

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. [Emphasis added.]

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<sup>1</sup>The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

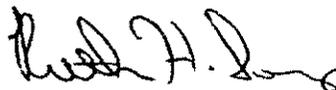
It is not apparent to this office that the 911 personnel who spoke with the individual placing the 911 call were in fact "emergency *medical services* personnel." However, assuming that such is the case, you have not established how the requested tape recording, which the city created and currently maintains, constitutes an EMS record made confidential under section 773.091(b) of the Health and Safety Code. We therefore cannot conclude, based on the facts before us, that section 773.091(b) applies to the recording.

However, as noted above, section 552.101 of the Government Code also excepts from public disclosure information deemed confidential by judicial decision, including information protected by common-law privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Among the categories of information protected by common-law privacy are certain medical information relating to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, and emotional/mental distress. Open Records Decision Nos. 370 (1983), 262 (1980).

Clearly, the requested recording implicates the privacy interests of the individual who required medical care and thus must be withheld from the public. However, it is not clear to this office whether the requestor of the recording is the same individual who required the medical assistance. If such is the case, the requestor has a special right of access to the tape recording pursuant to section 552.023(a) of the Government Code. On the other hand, if the city determines that the requestor does not have a special right of access to the recording under section 552.023, the recording must be withheld under common-law privacy as incorporated with section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/RWP/rho

Ref.: ID# 36270

Enclosure: Tape recording