



June 8, 1999

Ms. Marie Galindo
Assistant City Attorney
City of Midland
300 N. Loraine, Room 320
Midland, Texas 79702-1152

OR99-1593

Dear Ms. Galindo:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124922.

The City of Midland (the "city") received a request for information relating to the traffic accident which resulted in the death of the requestor's father. The requestor is the executor of her father's estate. You state that you have released some of the responsive information. You claim, however, that the submitted documents are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The records submitted as Exhibit F are Emergency Medical Service ("EMS") patient records pertaining to the requestor's father. Access to these types of records is governed by statutes other than chapter 552 of the Government Code. Section 773.091 of the Health and Safety Code (the "EMS Act") provides:

(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.

Section 773.093 sets out the conditions for release of such confidential patient information. Generally, EMS patient records must be released upon the written consent of a personal representative of a deceased patient. *See* Open Records Decision No. 632 (1995) (defining “personal representative” for purposes of EMS Act). The written consent must specify (1) the information covered by the release, (2) the reasons or purpose for the release, and (3) the person to whom information is to be released. Health & Safety Code § 773.093(a). The EMS patient records may be released only as outlined under section 773.093.

You explain that the toxicological report submitted as Exhibit B was ordered by the medical examiner, and is, therefore, a confidential medical record. We note that access to medical records is governed by the Medical Practice Act (the “MPA”), article 4495b of Vernon’s Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are 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.

Section 5.08(j)(1) provides for release of medical records upon the written consent of a deceased patient’s personal representative, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) also requires that any subsequent release of medical records must be consistent with the purposes for which the records were obtained. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

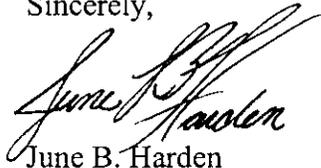
You also argue that the analyses of blood samples taken from the deceased and another individual are excepted from disclosure under section 552.101 in conjunction with the common law right to privacy. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas*

Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We have reviewed Exhibits C and D and conclude that the records are not excepted from disclosure under common-law privacy. *See generally* Open Records Decision No. 478 (1987) (concluding legitimate public interest in knowing that driver on public roads may have been driving while under influence of alcohol or other intoxicants). Furthermore, we note that a deceased person has no right of privacy. Open Records Decision No. 432 (1985), citing *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979). Consequently, the city must release Exhibits C and D to the requestor.

Finally, we note that federal regulations prohibit the release of criminal history record information ("CHRI") maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). We conclude that to the extent the documents submitted as Exhibit E fall within the ambit of these state and federal regulations they must be withheld.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 124922

Encl. Submitted documents

cc: Ms. Janet E. Anderson
15211 Rainhollow Drive
Houston, Texas 77070-1328
(w/o enclosures)