



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2005

Ms. Maleshia Farmer  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2005-04501

Dear Ms. Farmer:

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# 224793.

The City of Fort Worth (the "city") received a request for all calls or reports made regarding a specific address for the past 5 years. You state that you will release some of the requested information, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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:

(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.

Health & Safety Code § 773.091. Subsection 773.091(g) provides, however, that this confidentiality "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." *Id.* § 773.091(g).

After reviewing Exhibit D, we agree that it consists of records of the identity, evaluation, or treatment of a patient by emergency medical services personnel. You state that you have not received written consent regarding the release of these records. *See* Health & Safety Code § 773.093 (listing elements of consent for release of EMS records). Thus, with the exception of the information subject to 773.091(g), the city must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

You claim that the information in Exhibit C is excepted by section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. Section 611.002 provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). After reviewing the information in Exhibit C, we find that no portion of it is subject to chapter 611 of the Health and Safety Code. Accordingly, the city may not withhold any of the information in Exhibit C under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

You also claim that the information in Exhibit C is excepted under common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy protects information that is 1) highly intimate or embarrassing, such that its release 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 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses and identities of victims of sexual abuse are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 440 (1986), 393 (1983), 339 (1982). We have reviewed

Exhibit C and marked the information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim that some of the highlighted portions of Exhibit C are protected by section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. After reviewing Exhibit C, we agree that you must withhold the Texas-issued motor vehicle record information you have highlighted under section 552.130 of the Government Code.

In summary, with the exception of the information subject to 773.091(g), the city must withhold Exhibit D under section 552.101 in conjunction with section 773.091 of the Health and Safety Code. The city must withhold the information we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the Texas-issued motor vehicle record information you have highlighted in Exhibit C under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body

will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 224793

Enc. Submitted documents

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(w/o enclosures)