



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2006

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P. O. Box 469002
Garland, Texas 75046-9002

OR2006-01151

Dear Mr. Mann:

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# 241680.

The City of Garland (the "city") received a request for any written records regarding a specific dog bite and the subsequent quarantine of the animal. You state that the city has released the Animal Services Department Bite Report and the Sheltered Animal Record, but claim that the submitted emergency medical services report is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you assert that the both the Medical Practices Act and section 773.091 of the Health and Safety Code are applicable to the submitted information. This office has held that statutes governing access to a specific subset of information prevail over more general statutes. *See* Open Records Decision No. 598 at 4 (1991). The submitted information is an emergency medical services report. As section 773.091 specifically applies to the submitted information, we will address your arguments under this section.

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. Section 552.101 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 the submitted information, we agree that it consists of records of the identity, evaluation, or treatment of a patient by emergency medical services personnel. You indicate that none of the exceptions to confidentiality set forth in section 773.093 apply in this instance. *See* Health & Safety Code § 773.093 (listing elements of consent for release of EMS records). Thus, the city must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. However, information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient is not confidential under section 773.091.

With regard to the information that is subject to section 773.091(g), we address your assertion that this information is protected under common law privacy. Section 552.101 also encompasses the doctrine of common law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. We note that the identity of the patient at issue is confidential under section 773.091(b). After carefully reviewing the documents and your arguments, we find that the city has not demonstrated that any of the information subject to section 773.091(g) is protected by common law privacy. As you claim no other exceptions to disclosure, the information subject to section 773.091(g) of the Health and Safety Code 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); *Texas 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 Office of the Attorney General 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. 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 241680

Enc. Submitted documents

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(w/o enclosures)