



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2009

Mr. J. Middlebrooks
Assistant City Attorney
Criminal Law & Police Section
1400 S. Lamar
Dallas, Texas 75215

OR2009-05533

Dear Ms. Middlebrooks:

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# 340900.

The Dallas Police Department (the "department") received two requests from the same requestor for complaint information regarding a named police officer. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 exception encompasses information that other statutes make confidential, including chapter 773 of the Health and Safety Code, which pertains to emergency medical service ("EMS") records. Access to EMS records is governed by the

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

provisions of section 773.091 of the Health and Safety Code. *See* Open Records Decision No. 598 (1991). Section 773.091 provides in part the following:

(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(b), (g). You assert the submitted documents contain confidential EMS records. Upon review, we have marked an EMS record that is subject to section 773.091. You do not indicate, and the documents do not reflect, that the requestor has a special right of access to this record. Therefore, except for the information subject to section 773.091(g), which is not confidential, the department must withhold the EMS record we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. As our ruling is dispositive, we need not address your remaining argument against disclosure of this document.

You assert the submitted records also contain information subject to the Medical Practice Act (the "MPA"), which governs access to medical records and is encompassed by section 552.101 of the Government Code. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is 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.

Id. § 159.002(b)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* ORD 598. You have marked records within the remaining information at issue you assert must be withheld under section 552.101

and the MPA. Upon review, we agree that most of the information you marked constitutes medical records subject to the MPA. This information must be withheld under section 552.101 of the Government Code.² We note that you marked some information within an internal affairs police report as information subject to the MPA. You do not state, however, that this information was obtained from a medical record. Accordingly, we find you have failed to demonstrate how the MPA applies to the information marked within the submitted internal affairs report, and it must be released.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 911 districts established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand that the department is part of an emergency communication district established under section 772.318. You have marked the telephone number and address of a 911 caller that the department seeks to withhold, and you state that this information was furnished by a 911 service provider. Based on this representation, we conclude that the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 encompasses the doctrine of common-law privacy, which excepts from public disclosure private information about an individual if the information (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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. Also, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history).

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You have marked those portions of the remaining information at issue you assert are subject to common-law privacy. Upon review, we agree that the information you marked is highly intimate or embarrassing and not of legitimate public interest. Thus, the department may withhold this information under section 552.101 in-conjunction with common-law-privacy.³

You claim that some of the remaining information is excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security number, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. We note that section 552.117 is not applicable to cellular phone numbers that are paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988). Thus, to the extent the marked cellular telephone number pertains to service that is paid for by the officer at issue, we agree the department must withhold the information you have marked under section 552.117(a)(2) of the Government Code.

You marked information you assert is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Thus, the department must withhold the Texas-issued driver's license and motor vehicle record information you have marked under section 552.130 of the Government Code.

You have also marked information under section 552.136(b) of the Government Code, which states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136. An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). You inform us that an employee's identification number is the same number used for the city credit union bank accounts. Based on this representation, we agree the department must withhold the bank account, credit card account, and employee identification numbers you have marked under section 552.136 of the Government Code.

In summary, except for information subject to section 773.091(g), the department must withhold the EMS record we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. Except for the information we marked for release, the department must withhold the information you

³As our ruling is dispositive, we need not address your remaining argument against disclosure of a portion of this information.

marked under section 552.101 of the Government Code in conjunction with the MPA, section 772.318 of the Health and Safety Code, and the doctrine of common-law privacy. The department must also withhold the information you marked under sections 552.117(a)(2), 552.130, and 552.136 of the Government Code. The remaining information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 340900

Enc. Submitted documents

c: Requestor
(w/o enclosures)