



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2009

Ms. Eileen McPhee
Carls, McDonald & Dalrymple, L.L.P.
City Attorneys, City of Georgetown
Barton Oaks Plaza 2
901 South Mopac Expressway, Suite 500
Austin, Texas 78746

OR2009-09396

Dear Ms. McPhee:

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# 348458 (CMcD Nos. 2080 & 2082).

The Georgetown Police Department (the "department"), which you represent, received two requests for a specific incident report. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception 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 the common-law right of privacy, which 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be

¹We note you have also marked social security numbers in the submitted information. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See Gov't Code § 552.147(b).*

established. *See id.* at 681-82. The types of information considered intimate or 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. *See id.* at 683. This office has found that the following types of information are also excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we agree that some of the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated that the remaining information you have marked is intimate or embarrassing and not of legitimate public concern; therefore, the department may not withhold any of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information made confidential by other statutes, including section 773.091 of the Health and Safety Code, which is applicable to certain information related to the provision of emergency medical services ("EMS"). Section 773.091 provides in relevant part:

(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.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(b)-(c). However, section 773.091(g) provides that, "[t]he 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." *Id.* § 773.091(g). We conclude that the submitted EMS information, which we have marked, is confidential under section 773.091.

However, we note that such information may be released to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf.” *Id.* § 773.092(e)(4). Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the department receives the required written consent for release under sections 773.092 and 773.093 of the Health and Safety Code.

We next note that the submitted information contains a partial credit card number belonging to the first requestor. Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of [the Act], 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.”² Gov’t Code § 552.136(b). Thus, the information we have marked under section 552.136 is generally confidential. However, section 552.136 is designed to protect personal privacy interests and, under section 552.023 of the Government Code, a person has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests. *See id.* § 552.023. Thus, the first requestor has a special right of access to the partial credit card number we have marked. Accordingly, the department must release this information to the first requestor, but must withhold this information from the second requestor under section 552.136.

Finally, we note that the submitted information contains multiple e-mail addresses, one of which belongs to the first requestor. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).³ *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not of a type specifically excluded by subsection (c), and you do not indicate that the department has received consent to release any of these e-mail addresses. However, because section 552.137 protects personal privacy interests, the first requestor has a special right of access to her own e-mail address under section 552.023, and the department must release this information to her. *See id.* § 552.023. The department must withhold the other e-mail address at issue from the first requestor and must withhold both of the e-mail addresses at issue from the second requestor.

In summary, the department: (1) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) must

²The Office of the Attorney General will raise a mandatory exception, such as section 552.136, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

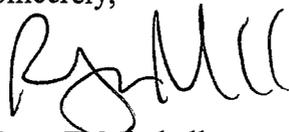
³We raise this mandatory exception on the department’s behalf. *See* ORD Nos. 481, 480, 470.

withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the department receives the required written consent for release under sections 773.092 and 773.093 of the Health and Safety Code; (3) must withhold the information we have marked under section 552.136 of the Government Code from the second requestor, but must release this information to the first requestor; (4) must withhold both of the e-mail addresses we have marked under section 552.137 of the Government Code from the second requestor and must withhold the marked e-mail address belonging to a party other than the first requestor from the first requestor; and (5) must release the remainder of the submitted information.

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 348458

Enc. Submitted documents

cc: Requestor
(w/o enclosures)