



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2009

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law & Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-11131

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# 351531 (DPD PIR # 09-4053).

The City of Dallas' Police Department (the "city") received a request for all documents related to internal affairs investigations regarding a named individual, the individual's concise resume, and the individual's patrol division activity records for a specified time period. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.103, 552.130 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that you have not submitted the requested resume or patrol division activity records. To the extent such information existed on the date of the request, we assume you have released it. If you have not released such information, you must do so at this time. *See* Gov't Code §§ 552.301, .302.

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.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in relevant part:

(a) the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The information you seek to withhold under section 552.103 consists of completed reports and their attachments made for or by the city, which are expressly public under section 552.022(a)(1). Although you claim this information is excepted from disclosure under section 552.103 of the Government Code, we note that this exception to disclosure is a discretionary exception under the Act that does not constitute "other law" for purposes of section 552.022. Thus, the city may not withhold the information subject to section 552.022, which we have marked, under section 552.103 of the Government Code. However, we note that some of the information subject to section 552.022(a)(1) may be excepted under sections 552.101 and 552.130 of the Government Code. Because information subject to section 552.022(a)(1) may be withheld under these sections, we will consider the applicability of these exceptions to the completed reports, as well as the remaining information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the Medical Practice Act ("MPA"). Occ. Code §§ 151.001-165.160. Section 159.002 provides in pertinent part:

(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). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have also found that when a file is created as the result of a hospital stay, all the

documents in the file relating to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See* Occ. Code. § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991).

Medical records must be released upon the governmental body’s receipt of the patient’s signed, written consent, 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. *See* Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). We have marked the medical records that are subject to the MPA. The city may only disclose these records in accordance with the MPA.

The remaining information also includes emergency medical service (“EMS”) records that are confidential under section 773.091 of the Health and Safety Code, which is also encompassed by section 552.101 of the Government Code. *See* ORD 598. 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). Thus, except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-773.094. We note that this 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). The consent must be in writing, signed by the patient, authorized representative, or personal representative, and specify: (1) the information to be covered by the release; (2) the reasons or purposes for the release; and (3) the person to

whom the information is to be released. *Id.* § 773.093(a). Thus, the city must withhold the marked EMS records under section 773.091, except as specified by section 773.091(g), unless the individuals' personal representative provides the city with written consent that meets the requirements of section 773.093(a). *See id.* §§ 773.092, .093; ORD 632.

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 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 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 city is part of an emergency communication district established under section 772.318. You have marked the telephone number and address of a 9-1-1 caller that the city seeks to withhold under that section. Provided that it was furnished by a 9-1-1 service supplier, we agree that the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 also encompasses Chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprint information at issue. Therefore, the city must withhold the fingerprint information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 encompasses the doctrine of common-law privacy which protects information that (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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. 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. *See* 540 S.W.2d at 683. Additionally, 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). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information relating to routine traffic violations is not excepted from release under common-law privacy. *Cf. Gov't Code* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find that some of the information you have marked and the additional information we have marked, constitutes highly intimate or embarrassing information that is not of public concern. However, the remaining information you have marked is not highly intimate or embarrassing or of legitimate public concern. Thus, except where we have marked for release, the city must withhold the information you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" *Gov't Code* § 552.130. Accordingly, the city must withhold the Texas motor vehicle information you have marked, and the additional information we have marked, in the remaining information pursuant to section 552.130 of the Government Code.

Section 552.136 of the Government Code provides 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). You inform us that the city's employee identification numbers are used in conjunction with one additional digit in order to access city credit union accounts. The city must withhold the identification number you have marked in remaining information under section 552.136 of the Government Code.

In summary, the city may only disclose the medical records we have marked in accordance with the MPA. The city must withhold the marked EMS records under section 773.091, except as specified by section 773.091(g), unless the individuals' personal representative provides the city with written consent that meets the requirements of section 773.093(a). Provided that the information you marked was furnished by a 9-1-1 service supplier, the city must withhold the information you have marked under section 552.101 of the Government

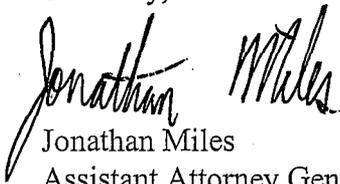
²As our ruling is dispositive, we need not address your remaining argument for this information.

Code in conjunction with section 772.318 of the Health and Safety Code. The city must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. Except where we have marked for release, the city must withhold the information you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the Texas motor vehicle information you have marked, and the additional information we have marked, pursuant to section 552.130 of the Government Code and must withhold the information you have marked pursuant to section 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 351531

Enc. Submitted documents

c: Requestor
(w/o enclosures)