



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2011

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

OR2011-01639

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# 407774 (DPD PIR No. 2010-10446).

The Dallas Police Department (the "department") received a request for specified internal affairs records relating to a named individual. You claim that some of the submitted information is 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as 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

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.

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 the City of Dallas 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 the department seeks to withhold. We conclude that, if the marked telephone number and address were furnished by a 9-1-1 service supplier, then the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. If the marked information was not provided by a 9-1-1 service supplier, then it may not be withheld under section 552.101 in conjunction with section 772.318.

We next note that you raise both section 773.091 of the Health and Safety Code and the Medical Practices Act (the "MPA"), subtitle B of title 3 of the Occupation Code for the submitted EMS patient care reports. Section 552.101 of the Government Code also encompasses both section 773.091 and the MPA. Section 773.091 of the Health and Safety Code governs access to EMS records. *See* Open Records Decision No. 598 (1991). Section 773.091 provides in 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.

...

(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). We agree that the EMS patient care reports in the submitted internal investigation file constitute EMS records pursuant to section 773.091. Section 159.002 of the Occupations Code 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.

Occ. Code § 159.002(b), (c). This office has concluded that EMS reports created under the delegated authority of a physician are medical records within the confidentiality and disclosure provisions of the MPA. *See* Open Records Decision Nos. 598 at 1; 578 (1990). Medical records subject to the MPA 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).

Because the EMS patient care reports fit within both of these statutes and the confidentiality and release provisions of section 773.091 of the Health and Safety Code and the MPA are in conflict, we must determine which statute governs access to this information. Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized, if possible; but if there is any conflict, the specific statute will prevail, unless it appears that the legislature intended to make the general act controlling. *Burke v. State*, 28 S.W.3d 545, 546 (Tex. Crim. App. 2000). The legislature specifically enacted section 773.091 to govern the release of EMS records. Although the MPA provides for the confidentiality of all medical records, section 773.091 of the Health and Safety Code specifically protects EMS records but does not extend confidentiality to the information specified in section 773.091(g). Moreover, section 773.091 was enacted after the MPA. *See* Act of June 15, 1991, 72nd Leg., ch. 605, § 8, 1991 Tex. Gen. Laws 2203; *see also State v. Bradley*, 956 S.W.2d 725, 740 (Tex. App.—Fort Worth 1997), *rev'd on other grounds*, 990 S.W.2d 245 (Tex. 1999) (All statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it, and statutes are, therefore, to be construed in connection and harmony with the existing law.). Thus, it appears that the legislature intended for section 773.091 of the Health & Safety Code to control in this instance. Accordingly, we conclude that, notwithstanding the provisions of the MPA, the department must generally withhold the submitted EMS patient care reports under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. However, the department must release the information specified by section 773.091(g) from the submitted reports.

Section 552.101 also 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. *Id.* at 683. Upon review, we find that the information you have marked, in addition to the information we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You assert some of the remaining information is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. However, we are unable to determine from the information provided whether the individual whose information is at issue is a currently licensed peace officer. To the extent this individual is a currently licensed peace officer as defined by article 2.12, the department must withhold the information you have marked under section 552.117(a)(2) of the Government Code.

If this individual is not a currently licensed peace officer, section 552.117(a)(1) of the Government Code may apply to the information at issue. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 30 at 5 (1989)*. The department may only withhold the information at issue under section 552.117(a)(1) if the individual in question elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individual at issue made a timely election under section 552.024, the department must withhold the information you have marked under section 552.117(a)(1). If the individual did not make a timely election under section 552.024, this information may not be withheld under section 552.117(a)(1).

You assert portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department

must withhold the Texas motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.²

Next, you assert some of the remaining information is protected by section 552.136 of the Government Code, which 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 an employee’s identification number is used in conjunction with one additional digit in order to access the employee’s credit union account. Thus, we find the department must withhold the identification number you have marked under section 552.136 of the Government Code.

In summary, if the marked telephone number and address were furnished by a 9-1-1 service supplier, then the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Except for the information specified by section 773.091(g), which must be released, the department must withhold the submitted EMS patient care reports under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. The department must withhold the marked information under section 552.101 in conjunction with common-law privacy. To the extent the individual whose information is at issue is a currently licensed peace officer as defined by article 2.12, the department must withhold the information you have marked under section 552.117(a)(2) of the Government Code. Otherwise, to the extent this individual made a timely election under section 552.024 of the Government Code, the department must withhold the information you have marked under section 552.117(a)(1) of the Government Code. The department must withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code and the marked identification numbers under section 552.136 of the Government Code. The remaining information must be released.

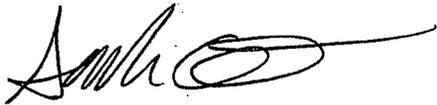
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/vb

Ref: ID# 407774

Enc. Submitted documents

c: Requestor
(w/o enclosures)