



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 10, 2011

Mr. Kenneth W. Findley  
Assistant Chief of Police  
Deer Park Police Department  
2911 Center Street  
Deer Park, Texas 77536-4942

OR2011-03372

Dear Mr. Findley:

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# 411437 (Deer Park PD Ref. # 140).

The Deer Park Police Department (the "department") received a request for the reports related to three specified incidents. You state that the department does not have records related to two of the specified incidents.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 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 protected by other statutes. Section 773.091 of the Health and Safety Code is applicable to certain information related to the provision of emergency medical services ("EMS"). Section 773.091(b) of the Health and Safety Code provides as follows:

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<sup>1</sup>We note the Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

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(b). You assert the submitted incident report is subject to section 773.091. We note this report was created by the department during its investigation of the incident specified in the request. Upon review, we find you have failed to demonstrate how this information was created by EMS personnel or a physician, or is maintained by an EMS provider. Accordingly, we conclude the submitted information is not confidential under section 773.091 of the Health and Safety Code, and the department may not withhold the submitted information under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. The doctrine of common-law privacy protects information if it (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* include 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department must withhold the marked information under section 552.101 in conjunction with common-law privacy. However, we find the remaining information is either not highly intimate or embarrassing or is of legitimate public interest. Accordingly, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions to the disclosure of the remaining information, it 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](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, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 411437

Enc. Submitted documents

c: Requestor  
(w/o enclosures)