



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 23, 2011

Ms. Sylvia McClellan  
Assistant City Attorney  
City of Dallas  
1400 South Lamar Street  
Dallas, Texas 75215

OR2011-07267

Dear Ms. McClellan:

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# 418360 (DPD No. 2011-1938).

The Dallas Police Department (the "department") received a request for all internal affairs and public integrity records for a named officer. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we address your argument under section 552.108, as this is potentially the most encompassing exception you claim. Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the information for which you raise section 552.108 consists of internal affairs records relating to two incidents. Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you represent to this office that these records relate to pending criminal case numbers 2010-086 and 2011-024 and that release of these records would interfere with the investigation or prosecution of crime. Based upon your representation and our review, we conclude that release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to this information.

As you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Thus, with the exception of basic information, the department may withhold the information at issue for case numbers 2010-086 and 2011-024 based on section 552.108(a)(1) of the Government Code.<sup>2</sup>

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. Section 552.101 encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications 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 only the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. Health & Safety Code § 772.304.

We understand the City of Dallas is part of an emergency communication district established under chapter 772. You have marked a telephone number of a 9-1-1 caller the department seeks to withhold. However, you do not inform us whether the information at issue was

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments for this information.

furnished by a service supplier. Accordingly, we will rule conditionally. Thus, if the 9-1-1 caller's telephone number you have marked was furnished by a 9-1-1 service supplier, then this marked information must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. But if the marked information was not furnished by a 9-1-1 service supplier, then it may not be withheld under section 552.101 on the basis of section 772.318 and must be released.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code. Section 773.091 is applicable to information relating to the provision of emergency medical services ("EMS") and provides in pertinent 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 further provides:

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.

*Id.* § 773.091(g). Upon review we agree some of the remaining information constitutes EMS records maintained by an EMS provider documenting emergency medical service provided to a patient by EMS and, therefore, are generally confidential under section 773.091. *See id.* § 773.003(8) (defining "emergency medical services" for the purposes of chapter 773 of the Health and Safety Code). Accordingly, the EMS information we have marked is confidential and must be withheld 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).<sup>3</sup> However, we find none of the remaining information you have marked under section 773.091 constitutes records maintained by an EMS provider; thus, the department may not withhold this information on this basis.

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument for this information.

Section 552.101 of the Government Code also encompasses medical records made confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA 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

Occ. Code § 159.002(b)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has determined 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). Upon review, we agree some of the remaining information constitutes confidential medical records under the MPA and the department must withhold this information, which we have marked, under section 552.101 of the Government Code.<sup>4</sup> However, we find none of the remaining information you have marked constitutes medical records for the purposes of the MPA; thus, the department may not withhold any of the remaining information on this basis.

You raise section 552.101 of the Government in conjunction with common-law privacy for portions of the basic information for case number 2011-024. Section 552.101 of the Government Code also encompasses the common-law right of privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *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. *Id.* at 683. Whether information is subject to a legitimate public interest and therefore not

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments for this information.

protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). This office has found the following types of information are 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 find you have failed to establish the information you seek to withhold under common-law privacy is highly intimate or embarrassing and not of legitimate concern to the public; therefore, this information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

You also claim section 552.130 of the Government Code for portions of the remaining information. Section 552.130 provides 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). We find the department must withhold the information you have marked under section 552.130 of the Government Code.<sup>5</sup>

Section 552.136 of the Government Code states, "Notwithstanding 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." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). You inform us an employee's identification number is used in conjunction with one additional digit to form the city credit union bank account number. Thus, we find the department must withhold the identification numbers you have marked under section 552.136 of the Government Code.

In summary: (1) with the exception of basic information, the department may withhold the information at issue for case numbers 2010-086 and 2011-024 under section 552.108(a)(1) of the Government Code; (2) to the extent the 9-1-1 caller's telephone number you have marked was furnished by a 9-1-1 service supplier, 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; (3) except as specified by section 773.091(g), 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; (4) the department must withhold the medical records we have marked under section 552.101

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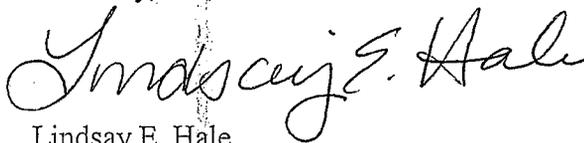
<sup>5</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

of the Government Code in conjunction with the MPA; (5) the department must withhold the information you have marked under section 552.130 of the Government Code; and (6) the department must withhold the identification numbers you have marked under section 552.136 of the Government Code. The department must release the remaining information at issue.

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/em

Ref: ID# 418360

Enc: Submitted documents

c: Requestor  
(w/o enclosures)