



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2015

Ms. Kristi Ward
Associate General Counsel
UMC Health System
602 Indiana Avenue
Lubbock, Texas 79415

OR2015-04368

Dear Ms. Ward:

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# 555710.

The Lubbock County Hospital District d/b/a University Medical Center (the "district") received a request for six categories of information related to a specified incident, including all audio recordings notifying the authorities of the accident. You state you have released a portion of the information to the requestor. You state you do not have information responsive to portions of the request.¹ You claim 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 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 exception encompasses information that other statutes make

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

confidential. You raise section 552.101 in conjunction with section 773.091 of the Health and Safety Code. This section provides, in part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(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(a)-(c). Section 773.091 further provides, however, 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). You inform us the requested audio recordings are 9-1-1/emergency medical services calls that were received by persons who are certified individuals in the emergency medical services division of the district. Based on your representations and our review, we find the second call constitutes a communication between certified emergency medical services personnel and a patient that was made in the course of providing emergency medical services to the patient. We therefore agree this information is confidential under section 773.091(a) of the Health and Safety Code. Thus, except as specified by section 773.091(g), the district must withhold the second call under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. However, the remaining information does not consist of a communication between certified emergency medical services personnel and a patient that was made in the course of providing emergency medical services to the patient. *See id.* § 773.091(a). Furthermore, it does not consist of a record of the identity, evaluation, or treatment of a patient by emergency medical services personnel. *See id.* 773.091(b). Thus, the remaining information is not confidential

under section 773.091 and the district may not withhold under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also encompasses section 241.152 of the Health and Safety Code. Section 241.152 of the Health and Safety Code states, in relevant part:

(a) Except as authorized by Section 241.153, a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.

Id. § 241.152(a). Section 241.151(2) of the Health and Safety Code defines "health care information" as "information . . . recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient." *Id.* § 241.151(2). However, the remaining information does not relate to the history, diagnosis, treatment, or prognosis of an identified patient; accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 241.152 of the Health and Safety Code.

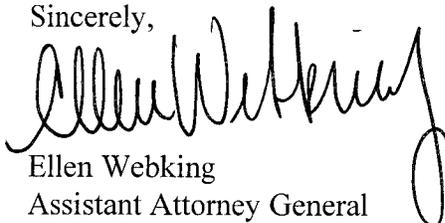
Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the district has failed to demonstrate how any of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, except as specified by section 773.091(g), the district must withhold the second call under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 555710

Enc. Submitted documents

c: Requestor
(w/o enclosures)