



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2015

Ms. Brenda N. McDonald
Messer, Rockefeller & Fort, P.L.L.C.
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2015-06118

Dear Ms. McDonald:

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# 563522.

The Addison Fire Department (the "department"), which you represent, received a request for information regarding services provided to the requestor's child, including any billing information. You state the department will release some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code. We have considered the exceptions 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. encompasses information protected by section 773.091 of the Health and Safety Code, which 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.

Id. § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091. *See id.* § 773.091. Upon review, we find section 773.091 is applicable to the submitted information. Therefore, with the exception of the information subject to section 773.091(g), which is not confidential under section 773.091, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.¹

You claim the information subject to section 773.091(g) of the Health and Safety Code is protected by common-law privacy. 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 none of the information subject to section 773.091(g) of the Health and Safety Code is highly intimate or embarrassing and of no legitimate public interest. Accordingly, none of this information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the information subject to section 773.091(g), which must be released, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.²

¹As we make this determination, we do not address your arguments for this information.

²This ruling does not affect an individual’s right of access to a patient’s EMS records from the EMS provider. *See* Health & Safety Code §§ 773.092, .093; *cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (Medical Practice Act does not provide patient general right of access to his or her medical records from governmental body responding to request for information under Act).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 563522

Enc. Submitted documents

c: Requestor
(w/o enclosures)