



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2015

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2015-14434

Dear Ms. Pemberton:

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# 571530 (City ID No. W016134).

The City of Killeen (the "city") received a request for the first responders report related to a named individual. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 773.091 of the Health and Safety Code, which provides, in relevant 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). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. Upon review, we find a portion of the submitted information constitutes an EMS record that is confidential under section 773.091(b) of the Health and Safety Code. Thus, section 773.091 is applicable to this information. However, we find the remaining information does not consist of records of the identity, evaluation, or treatment of patients by EMS personnel providing medical supervision that were created by the EMS personnel or maintained by an EMS provider. *See id.* § 773.091(b). Accordingly, the city may not withhold the remaining information under section 552.101 of the Government Code on that basis.

Section 773.092 of the Health and Safety Code states, however, that confidential EMS records may be disclosed to governmental agencies if the disclosure is required or authorized by law. *See id.* § 773.092(e)(2). In this instance, the requestor is an ombudsman with the Office of Injured Employee Counsel (the “OIEC”) of the Texas Department of Insurance. Under chapter 404 of the Labor Code, the OIEC’s duties include providing assistance to injured employees during the workers’ compensation administrative dispute resolution process or an enforcement action for violation of the Texas Workers’ Compensation Act. *See* Labor Code § 404.105(a). Section 404.155 of the Labor Code provides, in pertinent part, as follows:

(a) At the written request of an ombudsman designated under this subchapter who is assisting a specific injured employee, a health care provider shall provide copies of the injured employee’s medical records to the ombudsman at no cost to the ombudsman or the [OIEC].

Id. § 404.155(a). The requestor states she is requesting the information at issue in order to assist an injured employee in the workers’ compensation program. Upon review, the submitted information shows the city’s EMS division is the health care provider with respect to the EMS records at issue. *See id.* § 401.011(19)-(22) (defining “health care,” “health care facility,” “health care practitioner,” and “health care provider” for purposes of subtitle A of title 5 of the Labor Code). Thus, the requestor has a statutory right of access to the information pursuant to section 404.155(a). Therefore, the city may not withhold this information from the requestor pursuant to section 552.101 in conjunction with section 773.091 of the Health and Safety Code. *See* Health & Safety Code § 773.092(e)(2). Although you claim this information is excepted under section 552.101 of the Government Code in conjunction with common-law privacy, a specific statutory right of access prevails over the common law. *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common

law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Consequently, pursuant to section 404.155(a) of the Labor Code, the city must release the EMS record at issue to this requestor.¹

Section 552.101 of the Government Code also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. Upon review, we find the remaining information, which we have marked, consists of a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created by a physician or someone under the supervision of a physician. Although the requestor claims she has a right of access to this information pursuant to section 404.155 of the Labor Code, we note the city is not the health care provider with respect to this information. *See* Labor Code § 404.155(a) (requiring the health care provider to provide copies of medical records to the OIEC); *see also id.* § 401.011(19)-(22). Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA.²

¹We note because the requestor has a special right of access to this information in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

²As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The city must release the remaining information to this requestor.

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,

A handwritten signature in black ink, appearing to read 'Tim Neal', is written over a horizontal line.

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 571530

Enc. Submitted documents

c: Requestor
(w/o enclosures)