



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 27, 2015

Mr. Steven A. Wood  
Staff Attorney  
City of Mansfield  
1305 East Broad Street  
Mansfield, Texas 76063

OR2015-15196

Dear Mr. Wood:

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# 575870 (ORR# 15-174).

The City of Mansfield and the Mansfield Police Department (collectively, the "city") each received a request for a specified incident report and emergency medical services ("EMS") report. 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.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it is not the specified incident report or EMS report. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

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 protected by other statutes, such as 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), EMS records are deemed confidential under section 773.091. Upon review, we find the information we have marked constitutes EMS records or information obtained from EMS records subject to chapter 773 of the Health and Safety Code. Thus, with the exception of the information subject to section 773.091(g), the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.<sup>1</sup>

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 some of the responsive information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, however, the requestor is the spouse of the individual whose privacy interests are at issue. Thus, the requestor may be the authorized representative of that individual, and may have a right of access to information pertaining to her spouse that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481

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<sup>1</sup>As our ruling is dispositive, we do not address your other argument to withhold this information.

at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of her spouse, then the city may not withhold any portion of the marked information from this requestor under section 552.101 on the basis of common-law privacy. If the requestor is not acting as the authorized representative of her spouse, then the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining responsive information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold any of the remaining responsive information under section 552.101 of the Government Code on this basis.

We note you have redacted some information under section 552.130(c) of the Government Code.<sup>2</sup> Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). As previously noted, the requestor is the spouse of the individual whose motor vehicle record information is at issue. Because section 552.130 protects personal privacy, if the requestor is acting as the authorized representative of her spouse, then she has a right of access to her spouse's motor vehicle record information pursuant to section 552.023. *See id.* § 552.023(a); ORD 481 at 4. In that instance, the city may not withhold the marked information under section 552.130. *See id.* If the requestor is not acting as her spouse's authorized representative, then the city must withhold the information we have marked under section 552.130 of the Government Code. In any event, we find the city must withhold the remaining information you have redacted under section 552.130 of the Government Code.

In summary, with the exception of the information subject to section 773.091(g) of the Health and Safety Code, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. If the requestor is not acting as the authorized representative of her spouse, then the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The city must withhold the remaining information you have redacted under section 552.130 of the Government Code. The remaining responsive information must be released.

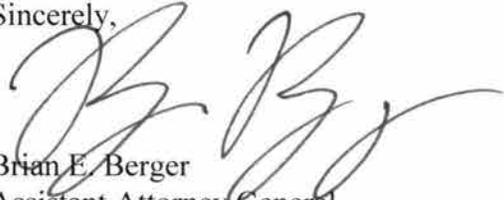
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<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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](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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 575870

Enc. Submitted documents

c: Requestor  
(w/o enclosures)