



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 16, 2015

Mr. Jeffrey W. Giles
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2015-21748

Dear Mr. Giles:

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# 583389 (GC No. 22580).

The Houston Fire Department (the "department") received a request for all incident reports pertaining to a specified incident on a specified date. 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 other statutes make confidential, 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), emergency medical service (“EMS”) records are deemed confidential under section 773.091. *See id.* § 773.091. Upon review, we find a portion of the submitted information constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, with the exception of the information subject to section 773.091(g), the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health & Safety Code.

Section 552.101 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 you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

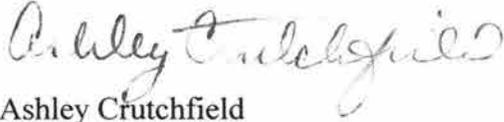
In summary, with the exception of the information subject to section 773.091(g), the department must withhold the information we marked under section 552.101 in conjunction with section 773.091 of the Health & Safety Code. The department must release the remaining information.

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 cursive script that reads "Ashley Crutchfield".

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 583389

Enc. Submitted documents

c: Requestor
(w/o enclosures)