



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 14, 1994

Mr. Mark E. Dempsey  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR94-548

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27485.

The City of Garland (the "city") received a request for various information concerning a traffic accident that resulted in a girl's death. You inform us that the Garland Fire Department provided emergency services to the girl following the accident. The requestor is an attorney representing the parents and the estate of the deceased girl. The mother of the deceased girl has signed an authorization for the release to the attorney of records concerning her daughter's medical care and treatment.

The request is for all tape recordings of conversations or any transmissions from the ambulance, all medical data or records that were transmitted via telemetry, copies of recordings of all conversations between the Garland Police Department and the Garland Fire Department, copies of recordings of all conversations between the Garland Fire Department or Police Department and any hospital, all medical records generated by the emergency technicians, all police records, and copies of recordings of all conversations between the Garland Fire Department, Garland Police Department, and any third party. The request is also for "anything that remotely pertains to LaTisha Ann Holland, the accident that resulted in her death or the scene of the accident."

As responsive to this request, the city enclosed an accident report of the Garland Police Department, a peace officer's accident report, a tape recording of conversations of

calls to the city's emergency number (911),<sup>1</sup> and an emergency medical services ("EMS") report, which was prepared by an attendant of the EMS vehicle involved. You say that the request for "anything that remotely pertains to LaTisha Ann Holland, the accident that resulted in her death or the scene of the accident" is so vague and overbroad that the city cannot determine what is being requested. You say that the city has no obligation to respond to this portion of the request, because it is vague and overbroad.

When a governmental body is presented with a broad request for information, it should advise the requestor of the types of information available so that the requestor may narrow his request. *See* Open Records Decision No. 563 (1990). Moreover, a governmental body must make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 (1990). Thus, we suggest that you inform the requestor of any information that you reasonably believe is responsive to this part of the request, so that the requestor may clarify the request. *See* Open Records Decision No. 563 at 7.

You seek to withhold the requested information you enclosed based on section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You assert that the city anticipates litigation relating to the accident.

You have enclosed a copy of a claim for damages filed with the city by the attorney representing the family and the estate of the deceased. This claim establishes the reasonable likelihood of litigation for purposes of section 552.103(a). *See* Open Records Decision Nos. 551; 452 (1986). We agree that the requested information relates to that claim. However, we must consider the specific information you enclosed to determine whether the city may withhold the information based on section 552.103(a).

We first consider the peace officer's accident report. Section 47(b)(1) of article 6701d, V.T.C.S., provides in pertinent part as follows:

For a period of 180 days after the date of an accident, the Department or a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request to:

....

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<sup>1</sup>These calls are from several individuals: citizens who called to report the accident, a witness with information about the accident, a representative of the Dallas Police Department, and the driver or attendant of the EMS vehicle involved in transporting the girl to the hospital. We note that page three of the EMS report contains the substance of these conversations.

(F) a parent of a person involved who is a minor;

....

(I) a representative of a person killed or injured in the accident;

....

(M) an attorney who represents an individual described by this subsection;

....

We think this provision gives the requestor here--an attorney for the parents of someone involved in the accident and for the estate of the deceased--access to the Texas peace officer's accident report. Statutes that govern access to a specific subset of information held by a governmental body prevail over the more general Open Records Act. Open Records Decision No. 598 (1991) at 4. Thus, section 47(b)(1) of article 6701d, V.T.C.S., rather than the Open Records Act, controls the release of the peace officer's accident report. Therefore, the city may not withhold the accident report from this requestor pursuant to section 552.103(a) of the Government Code.<sup>2</sup>

Similarly, the release of the EMS report and the tape recording are governed by a statute outside of the Open Records Act. Section 773.091(b) of the Health and Safety Code provides as follows:

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.

We think the EMS report and tape recording are records of the identity, evaluation, or treatment of a patient by EMS personnel that are created by the EMS personnel or maintained by an EMS provider. The report and recording are therefore within section 773.091(b). However, section 773.092(e) provides a relevant exception to the confidentiality of EMS records:

Communications and records that are confidential under this section may be disclosed to:

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<sup>2</sup>We note that 180 days after the date of the accident, a peace officer's accident report submitted to the Department of Public Safety is a public record. See V.T.C.S. art. 6701d, § 47(c).

.....

(4) any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information as provided by Section 773.093.

Section 773.093 sets forth the requirements for a valid consent to the release of information pursuant to section 773.092(a) as follows:

(a) Consent for the release of confidential information must be in writing and signed by the patient . . . or a personal representative if the patient is deceased. The written consent must specify:

- (1) the information or records to be covered by the release;
- (2) the reasons or purpose for the release; and
- (3) the person to whom the information is to be released.

The written consent in this case does not specify the reasons or purpose for the release. The consent, therefore, does not comply with the requirements of section 773.093 of the Health and Safety Code for a valid release of the EMS report. Thus, the city may not release the report under section 773.092(e)(4) of the Health and Safety Code. Consequently, until the requestor presents a valid consent for the release of the EMS report and tape recording, the city must withhold them pursuant to section 773.091(b) of the Health and Safety Code in conjunction with section 552.101 of the Government Code.<sup>3</sup>

We are aware of no statute that governs access to the accident report of the Garland Police Department. The city may, therefore, withhold the report under section 552.103(a) of the Government Code.

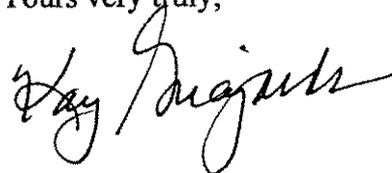
However, once the police department's report has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to the report, there is no justification for now withholding it from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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<sup>3</sup>Section 552.101 of the Government Code excepts from required public disclosure information considered to confidential by law, including by statute.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/KKO/rho

Ref.: ID# 27485

Enclosures: Submitted documents

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(w/o enclosures)