



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 18, 1995

Ms. Melissa Winblood  
Assistant City Attorney  
Office of the City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR95-632

Dear Ms. Winblood:

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# 23844.

The City of El Paso (the "city") received a request for emergency medical service ("EMS") records concerning a deceased patient. The requestor has provided an authorization to release medical records which is signed by an individual claiming to be the legal representative of the deceased.

You have provided copies of the requested documents and argue that the information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 773.091 of the Texas Health and Safety Code.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 773.091(b) of the Health and Safety Code provides in pertinent part:

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.

However, the Emergency Medical Services Act also provides under section 773.092(e):

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

....

(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, regarding consent, provides the following:

(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. [Emphasis added.]

You assert that an individual claiming to be the personal representative of the deceased must supply evidence that he/she is in fact the personal representative.<sup>1</sup> However, section 773.091 of the Health and Safety Code does not define the term "personal representative." Moreover, section 773.091 does not require proof that a party authorizing release of records is in fact a personal representative of the deceased.

In a recent decision, Open Records Decision No. 632 (1995), we concluded that the term "personal representative" as used in section 773.093 of the Health and Safety Code, signifies "personal representative" as defined in section 3(aa) of the Probate Code. However, the Probate Code does not necessarily require that all personal representatives bear letters testamentary or of administration. Open Records Decision No. 632 (1995) at 4. Thus, you may *accept*, but may not *require* letters of testamentary or of administration as a means of establishing the status of an individual as personal representative of the deceased. *Id.* In this case, the requestors, attorneys representing the family of the deceased, have provided an authorization for release of EMS records signed by the father of the deceased. The attorneys state that the father is the legal representative of his son's estate. We believe this is sufficient proof of the father's personal representative status as provided by section 773.093(a) of the Health and Safety Code.<sup>2</sup>

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<sup>1</sup>In other requests regarding EMS records, the city has asserted that copies of letters testamentary or of administration are required in conjunction with section 3(aa) of the Texas Probate Code to prove one's status as personal representative. We assume here that this is the evidence you desire the representative to provide.

<sup>2</sup>Although you do not raise it, we note that section 4.01(e) of the Medical Liability and Insurance Improvement Act establishes procedures for obtaining medical records relating to claims of medical liability. See V.T.C.S. art. 4590i, § 4.01 Section 4.01(e) provides that:

notwithstanding Section 5.08, Medical Practice Act . . . or any other law, a request for medical records of a deceased person or person who is incompetent shall be

See Open Records Decision No. 598 (1991) (assuming without information to contrary that deceased's widow is his personal representative for purposes of the Medical Practice Act and Health & Safety Code provisions). Therefore, you must release the information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/LMM/rho

Ref.: ID# 23844

Enclosures: Submitted documents

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(Footnote continued)

deemed to be valid if accompanied by an authorization signed by a parent, spouse or adult child of the deceased or incompetent person.

*Id.* § 4.01(e). While this provision applies only to claims of medical liability, this provision lends support to our conclusion that you may not require letters testamentary or of administration in order to release the EMS records in this instance.

opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Finally, 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).

Alternatively, however, because the requestor seeks copies of EMS records, purportedly on behalf of the deceased's parents, we conclude that the city may not withhold the requested documents under section 552.103 of the Government Code if a duly authorized consent for release of records is provided by the requestor. *See* Open Records Decision No. 598 (1991) (concluding that where a statute gives a qualified individual a right of access to records, exceptions to disclosure in the Open Records Act cannot be invoked to deny such access). Thus, if you have an authorization signed by a party who has statutory authority to provide such authorization, the Emergency Medical Service Act governs release of the documents; the information may not be withheld pursuant to section 552.103 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



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Ref.: ID# 23273

Enclosures: Submitted documents

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