



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 23, 1996

Ms. Nanette G. Williams
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR96-0063

Dear Ms. Williams:

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# 37966.

The City of El Paso (the "city") received a request for the Emergency Medical Service Records ("EMS") records, including bills, reports, notes, and charts, relating to the medical treatment received by R.D. Beisel. You state that the request for information is regarding EMS' transport of a patient, R.D. Beisel. The request is made by the attorney representing Mr. Beisel in connection with a "personal claim for injuries received on 12/01/95." The attorney submitted an authorization of release of medical records, signed by the patient, with the request. You state that the city has made a determination that the request for information involves litigation against the city since the request provides that the purpose of the request is "pending litigation." You contend that the documents requested are excepted from the required public disclosure by the "pending litigation" provision of section 552.103(a) of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.

Access to EMS records are governed by statutory provisions outside of chapter 552 of the Government Code. Section 773.091(b) of the Emergency Medical Services Act¹ provides:

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.

¹Health and Safety Code §§ 773.091, *et seq.* (Vernon).

However, section 773.092, regarding exceptions, provides:

(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:

(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.

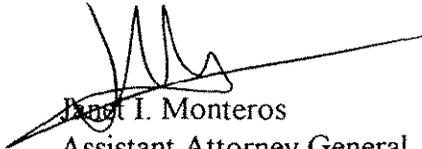
It appears that the consent provided by the requester in this instance fulfills the requirements of section 793.093(a). We also note that in Open Records Decision No. 598 (1991), this office held that EMS records are medical records subject to the provisions of section 5.08 of the Medical Practice Act, V.T.C.S. art. 4495b. Open Records Decision No. 598 (1991) at 1. However, in the same opinion, this office held that section 773.091 of the Emergency Medical Services Act provides for the same confidentiality, exceptions to confidentiality, and requirements for release of the information at issue as does section 5.08 of the Medical Practice Act, without conflicting with the provisions of that act, and that, although release of the information to one qualified to have it is not explicitly mandated by the Emergency Medical Services Act, we believe that reading the statute in harmony with the Medical Practice Act requires such a result as to these records. *Id.* at 3 n. 2.

Because access to EMS records are governed by statutory provisions outside of chapter 552 of the Government Code, exceptions to the Open Records Act may not be invoked to deny such access. Open Records Decision No. 598 (1991) (when statute gives qualified individual right of access to records, exceptions to disclosure in Open Records Act cannot be invoked to deny such access). We conclude that you may not withhold the requested information pursuant to section 552.103 (a) 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Dan I. Monteros
Assistant Attorney General
Open Records Division

JIM/ch

Ref: ID# 37966

Enclosures: Submitted documents

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(w/o enclosures)