



March 12, 1999

Ms. Linda Wiegman
Supervising Attorney
Texas Department of Health
1100 West 49th Street
Austin, TX 78711-3199

OR99-0720

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 122837.

The Texas Department of Health (the "department") received a request "to obtain in full all and any complaints and/or investigations involving Mr. George Marquez," an emergency medical services ("EMS") coordinator certified by the department, "or the EMS Program of North Central Texas College." In response to the request, you submit to this office for review the records at issue, which consist of investigation records. You assert that the documents which are responsive to the request are confidential in their entirety under section 773.0612(b) of the Health and Safety Code, in conjunction with section 552.101 of the Government Code. We have considered your arguments and claimed exception, and reviewed the information submitted.

The department states, and we agree, that it has not sought an open records decision from this office within the statutory ten-day deadline. *See Gov't Code § 552.301*. The department's delay in this matter results in the presumption that the requested information is public. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section also encompasses information protected by other statutes. Section 773.0612(a) of the Health and Safety Code provides that the department "is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this

chapter.” Section 773.0612(b) provides that “[a] report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with the rules adopted by the board.” You state that “[a]ll of the enclosed documents relate to records, reports or working papers used or developed in an investigation under this section [773.0612] and are confidential in their entirety.” Based on your representation, we conclude that all of the submitted records are confidential under section 773.0612(b), and must be withheld from disclosure.¹

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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 122837

Enclosures: Submitted documents

cc: Mr. Thomas Kevin Crump
8220 Herndon Drive
Fort Worth, Texas 76116
(w/o enclosures)

¹As the records are confidential under section 773.0612, we need not address the department’s other arguments against disclosure.