



April 1, 1999

Ms. Linda Wiegman
Supervising Attorney
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR99-0895

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 123057.

The Texas Department of Health (TDH) received a request for information regarding TDH Case Nos. 98-0046 and 98-0048. These cases involve ETMC-EMS, an emergency medical service licensed by TDH. 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, as well as 25 T.A.C. §157.18(d), and thus excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Government Code section 552.301(a) requires a governmental entity seeking to withhold public information to submit a request for a decision to the attorney general "not later than the 10th business day after the date of receiving the written request." Government Code section 552.302 states: "If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information." This legal presumption that the requested information is open to the public may be overcome only by a demonstration of a compelling interest. *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). A demonstration that the requested information is deemed confidential by law is a compelling interest sufficient to negate this presumption. See Open Records Decision No. 150 (1977).

You assert that the documents which are responsive to the request are excepted from disclosure under section 552.101 of the Government Code, in conjunction with section 773.0612(b) of the Health and Safety Code and 25 T.A.C. § 157.18(d). Section 552.101 of the Government Code provides that information is protected from disclosure under the Open Records Act if it is confidential by law. Section 773.0612(a) 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.” 25 T.A.C. § 157.18(d) provides that “all reports, records, and working papers used or developed in an investigation authorized under this section are confidential and may only be used for determining violations, or deficiencies and for disciplinary action.”

You indicate that TDH used the documents at issue in its investigation into a complaint made against the ETMC-EMS. We note that even though some of the records included in the investigation file may include documents such as the police report in the possession of TDH, all of the submitted records are confidential under section 773.0612 and 25 T.A.C. § 157.18(d) as records used or developed during the investigation. Thus, the records must be withheld from public disclosure.

However, some of the documents consist of medical records. The release of medical records is governed by section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the “MPA”), which provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient’s behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990) . These documents may be released only in accordance with these provisions of the MPA. Open Records Decision No. 598 (1991).

We note that the submitted documents include an autopsy report. Autopsy reports prepared by a medical examiner are expressly made public by the Code of Crim. Proc. art. 49.25, § 11. However, the autopsy report is included in the investigation file made confidential under section 773.0612(b) of the Health and Safety Code. When two statutes conflict and cannot be harmonized, the more specific statute prevails as an exception over the general provision. *See Font v. Carr*, 867 S.W.2d 873, 881 (Tex.App. - - Houston [1st Dist.] 1993, writ dismissed w.o.j.). We believe that the Health and Safety Code provision is more general than the provision concerning autopsy reports. Thus, the autopsy report provision prevails as an

exception to the Health and Safety Code provision. Therefore, the autopsy report must be released in accordance with article 49.25, section 11, of the Code of Criminal Procedure.

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,

David Van Brunt Price
David Van Brunt Price
Assistant Attorney General
Open Records Division

DVP\nc

Ref: ID# 123057

Enclosures: Submitted documents

cc: Ms. Joe Ann Huddleston
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(w/o enclosures)