



May 6, 1999

Mr. Miles K. Risley
Senior Assistant City Attorney
Legal Department
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR99-1236

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124945.

The City of Victoria received a request for a report of a fire. You seek to withhold the requested information under sections 552.101 and 552.108 of the Government Code.

We note initially that, in our opinion, you have waived your claim under section 552.108, the “law enforcement exception,” by not timely seeking the decision of this office. The Texas Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body’s receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See Gov’t Code § 552.302.* This presumption of openness can only be overcome by a compelling demonstration that the

information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

You received the request for information on March 2, 1999. The postmarks on the envelope in which you submitted your request for our decision indicate that, although the envelope was first postmarked March 10, 1999, it was returned for insufficient postage and then mailed again with a postmark of March 18, 1999. Section 552.308 of the act provides that when a submission within a specified amount of time is required under the act, the time requirement is met if the document is sent first class mail “*with postage prepaid*” and the postmark date is within the required time period. Consequently, you have not met your statutory burden. Gov’t Code 552.301. The requested information is therefore presumed public.¹ Since you contend, however, that some of the requested information is confidential by law, we will consider whether any of the submitted information must be withheld.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute. Section 773.091 of the Health and Safety Code provides:

(b) 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.

This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” Health & Safety Code § 773.091(g). We do not understand any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code to apply in this instance.

In our opinion, you have not established, nor does the submitted information show on its face, that the records at issue are either “[r]ecords of the identity, evaluation, or treatment of a patient” by the personnel listed in section 773.091(b) or are maintained by an emergency medical service provider under that provision. Therefore, none of the submitted information may be withheld under section 773.091. You must release the requested information.

¹Generally, sections 552.103, 552.108, and 552.111 do not provide a compelling demonstration to overcome the presumption of openness. *See* Open Records Decision Nos. 586 (1991), 551 (1990), 473 (1987), 470 (1987).

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,



William Walker
Assistant Attorney General
Open Records Division

WMW/eaf

Ref.: ID# 124945

encl. Submitted documents

cc: Mr. Gene F. Dette
The Summitt Group
P.O. Box 922020
Houston, Texas 77292
(w/o enclosures)