



April 6, 2000

Ms. Cheryl D. Wilson
Olson & Olson
Three Allen Center
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2000-1338

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134758.

You inform this office that your law firm received a public information request on behalf of the City of Dickinson (the "city") for information pertaining to a fatal apartment fire. You state that although you believe that most of the information at issue is excepted from required public disclosure pursuant to section 552.108(a)(2) of the Government Code, the city has nevertheless chosen to waive the protection of that exception.¹ Consequently, the city has released most of the information at issue to the requestor. You contend, however, that certain portions of the information at issue are excepted from disclosure under section 552.101 of the Government Code in conjunction with various confidentiality statutes.² We will discuss each of your contentions in turn.

You first contend that portions of a supplemental incident report prepared by the city's police department are made confidential under section 261.201 of the Family Code, which provides:

¹Because the city has voluntarily waived the protection of section 552.108(a)(2) in this instance, we need not address here the effect of your agreement with the requestor to delay requesting a decision from this office.

²Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The demonstration that information is made confidential by law overcomes the resulting presumption that the information is public where a decision from this office is not timely requested. See Gov't Code § 552.302; Open Records Decision No. 150 (1977).

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We agree that portions of the information you have highlighted in the supplemental report consist of information pertaining to the investigation of child abuse and thus must be withheld from the public pursuant to section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. We have marked in brackets the information that the city must withhold. The remaining highlighted information, however, does not come within the protection of section 261.201 and therefore must be released.

You next contend that two autopsy reports must be withheld in their entirety pursuant to section 671.013(a) of the Health and Safety Code, which provides in pertinent part as follows:

An autopsy report shall be released on request to an authorized person in connection with the determination of the cause of death in relation to a workers' compensation or insurance claim.

You contend that the city must withhold the two autopsy reports at issue because "there is no evidence that the Requestor is an 'authorized person' seeking the" autopsy reports for purposes of section 671.013(a). Please note, however, that "autopsy reports" by medical examiners are specifically made subject to required public disclosure under section 11 of article 49.25 of the Code of Criminal Procedure. Consequently, the requestor has a right of access to the autopsy reports under the Code of Criminal Procedure. The city, therefore, must release the two autopsy reports, including the attached toxicology reports, to the requestor. *See* Health & Safety Code § 671.011(a)(2) (including toxicology report as part of autopsy report). In contrast, however, a recent amendment to section 11 of article 49.25 of the Code of Criminal Procedure exempts from required public disclosure, with certain exceptions not applicable here, "a photograph or x-ray of a body taken during an autopsy."

See Act of May 22, 1999, 76th Leg., R.S., ch. 607, § 2, 1999 Tex. Gen. Laws 3148. Accordingly, the city may not release any of the autopsy photographs to the requestor.³

You next contend that the city must withhold certain telephone numbers and addresses pursuant to section 772.318(c) of Health and Safety Code, which makes confidential originating telephone numbers and addresses furnished on a call-by-call basis by a service supplier to a 9-1-1 emergency communication district established under subchapter D of chapter 722 of the Health and Safety Code.⁴ *See* Open Records Decision No. 649 (1996). Assuming that the 9-1-1 communication district that serves the city in fact was established under subchapter D of chapter 722, we conclude that the city must withhold all such telephone numbers and addresses pursuant to section 772.318(c).

The next set of records you seek to withhold consists of EMS records. Section 773.091 of the Health and Safety Code provides in pertinent part:

(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.

....

(g) The privilege of confidentiality under this section 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.

We agree that the records you submitted to us as "Attachment No. 4" constitute "[r]ecords of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician" that must be withheld pursuant to section 773.091(b), except to the extent that the records contain the types of information listed in subsection (g), which the city must release.

Finally, you contend that a portion of the supplemental report referenced above consists of criminal history record information ("CHRI") that the city obtained from another criminal

³Section 11(1) of article 49.25 provides, however, that autopsy photographs and x-rays are subject to disclosure "under a subpoena or authority of other law." Section 671.013 of the Health and Safety Code specifies that an "authorized person" seeking the autopsy report "in connection with the determination of the cause of death in relation to a workers' compensation or insurance claim" is entitled to the entire autopsy report, including autopsy photographs and x-rays. *See* Health & Safety Code § 671.013(c)(2).

⁴Subchapter D applies to 9-1-1 districts for counties with a population over 20,000.

justice agency. A criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI the city obtained from another criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. We have marked in brackets a portion of the information you have highlighted that the city must withhold in accordance with chapter 411 of the Government Code. The remaining information, including the handwritten notes (except as marked), must be released to the requestor.

To summarize: (1) the portions of the supplemental report that concern an investigation into child abuse, which are made confidential under section 261.201 of the Family Code, must be withheld; (2) both autopsy reports must be released to the requestor, but the city must withhold autopsy photographs in accordance with section 11 of article 49.25 of the Code of Criminal Procedure; (3) originating telephone numbers and addresses furnished on a call-by-call basis by a service supplier to a 9-1-1 emergency communication district established under subchapter D of chapter 722 of the Health and Safety Code must be withheld pursuant to section 772.318(c) of Health and Safety Code, assuming subchapter D is applicable here; (4) EMS records must be withheld pursuant to section 773.091(b) of the Health and Safety Code, except to the extent that the records contain the types of information listed in section 773.091(g); and (5) criminal history record information that the city obtained from another criminal justice agency must be withheld in accordance with chapter 411 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

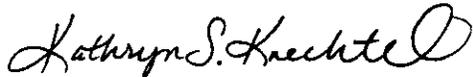
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kathryn S. Knechtel
Assistant Attorney General
Open Records Division

KSK/RWP/ljp

Ref: ID# 134758

Encl. Submitted documents

cc: Mr. Fidel Perez, III
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(w/o enclosures)