



July 21, 2000

Mr. Miles Risley
Sr. Assistant City Attorney
City Of Victoria
P O Box 1758
Victoria, Texas 77902-1758

OR2000-2759

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137800.

The City of Victoria (the "city") received a request for information, as follows:

I need to listen to any tape regarding ER dispatch to Copperfield Village Wednesday 5-17-00 approx. 2:50 or so in the a.m. about a resident being down w/ massive heart attack. Police had to break in door to reach resident. I need to know exactly what my operator said on any call regarding this situation.

You indicate that information that is responsive to the request exists in the form of an "ER Dispatch Tape." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note at the outset that the city did not submit the information at issue for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must submit to attorney general the specific information requested, or representative samples if a voluminous amount was requested). Thus, the city did not comply with all of the requirements of section 552.301. In pertinent part, section 552.302 of the Government Code provides that if a governmental body does not request an attorney general decision as provided by section 552.301, the responsive information "is presumed to be subject to required public disclosure and must be

released unless there is a compelling reason to withhold the information.” You aver that the responsive information constitutes an emergency medical services (“EMS”) record that is confidential pursuant to section 773.091 of the Health and Safety Code. This office has found that a compelling reason to withhold information from the public exists where it is demonstrated that the information at issue is made confidential by some other source of law. Open Records Decision Nos. 150 (1977), 26 (1974). We therefore address your assertion of confidentiality.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Where information is demonstrated to comprise an EMS record, we believe that access to the information is governed by the provisions of the Emergency Medical Services Act, found at sections 773.091 through 773.093 of the Health and Safety Code. Open Records Decision No. 598 (1991). Section 773.091 of the Health and Safety Code provides in pertinent part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(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.

Based on the limited information you have provided, we assume that the “ER Dispatch Tape” at issue consists of a recording of a call made to a 911 operator whereby the operator dispatched EMS personnel to the scene. As to the above-quoted subsection 773.091(a), we have no indication that the recording at issue, or any portion thereof, constitutes a “communication between” the patient and the EMS personnel. We also have no indication that the recording contains any “communication between” the patient and a physician providing medical supervision to the EMS personnel. Additionally, it appears that the communication was not “made in the course of providing emergency medical services to the patient[,]” but rather was made prior to such services being provided. Thus, we conclude that you have not demonstrated that subsection 773.091(a) of the Emergency Medical Services Act applies to the recording. With reference to the above-quoted subsection 773.091(b), we also have no indication that the recording at issue constitutes a record “of the identity, evaluation, or treatment” of the patient that was either “created by” the EMS personnel (or supervising physician), or that is “maintained by an emergency medical services provider[.]” Thus, the city also has not demonstrated that subsection 773.091(b) of the Emergency Medical Services Act makes the information

confidential. In short, because you have not submitted the information for our review nor explained how the Emergency Medical Services Act applies to the information, we have no basis for concluding that the information is confidential. We therefore have no choice but to order the information released to the requestor, pursuant to section 552.302 of the Government Code.¹

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).

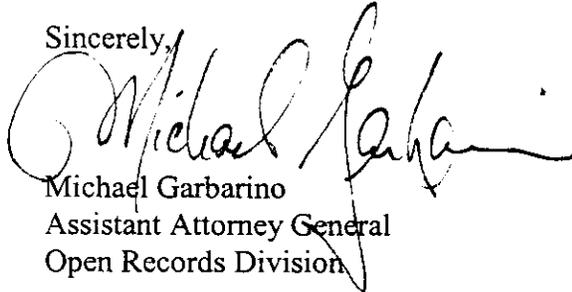
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

¹We caution that section 552.352 of the Public Information Act provides for criminal penalties for the improper release of confidential information. See Gov't Code § 552.352. If you believe that the information is confidential and cannot lawfully be released, you must challenge this decision in court as outlined below.

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,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is written in a cursive style with a large initial "M".

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 137800

Encl. Submitted documents

cc: Mr. David Snell
Access Telemessaging
4502 Lilas Street, Suite 1
Victoria, Texas 77901
(w/o enclosures)