



July 26, 2000

Ms. Cynthia B. Garcia
Assistant City Attorney
City Of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2000-2815

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 137476.

The City of Fort Worth (the "city") received a request for "a copy of the fire department letter to Medstar regarding the abuse of [the requestor's] mother by [a Medstar employee]." You assert that the requested information, an "Inter-Divisional Action Request Form" completed by a fire department employee, is excepted from required public disclosure by section 773.091 of the Health and Safety Code. We have considered the exception you claim and reviewed the submitted information.

We believe that the information at issue constitutes an emergency medical services ("EMS") record. Access to EMS records is governed by provisions outside the Act, specifically 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 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.

With the exception of the information described in subsection (g), section 773.091 requires withholding the information in the record at issue here from *public* disclosure. However, section 773.092 provides for exceptions to the confidentiality of EMS record information that is subject to section 773.091. It appears the requestor in this instance is an adult child of the patient. Subsection (e)(4) of section 773.092 provides that confidential EMS records may be released to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf for the release of confidential information as provided by section 773.093.” Subsection (a) of section 773.093 provides, in part, that consent for the release of confidential EMS records must be in writing and signed by the patient. Under section 773.093(a), a written consent for release must specify: 1) the information covered by the release, 2) “the reasons or purpose for the release,” and 3) “the person to whom the information is to be released.”¹

If the requestor provides the city a signed release that complies with section 773.093, the information at issue must be released to the requestor. However, at present, we have no indication that the requestor has provided the city such a signed release. Thus, except for the information described above in subsection (g) which must be released, and in the absence of a signed release that complies with section 773.093, we conclude that the city must at this time withhold the information from the requestor.

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).

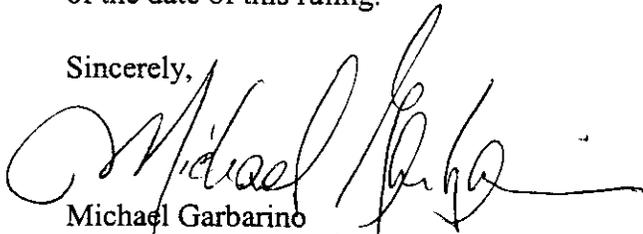
¹It should be noted that subsection (c) of section 773.093 provides that “[a] person who receives information made confidential by [chapter 773] may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.”

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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 137476

Encl. Submitted documents

cc: Mr. Fred Mallick
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(w/o enclosures)