



August 30, 2000

Ms. Lisa Aguilar  
Assistant City Attorney  
City of Corpus Christi  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2000-3355

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 138666.

The Corpus Christi Fire Department (the "fire department") received a request for information relating to a chemical spill on October 31, 1998 on Hopkins Road in Corpus Christi. You state that the City of Corpus Christi (the "city") has provided the incident report to the requestor. You claim, however, that additional records are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. We have considered the exception you claim and reviewed the submitted information.

We initially note that you have failed to timely submit a request for a decision as required by Government Code section 552.301. Subsections 552.301(a) and (b) provide as follows:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

In this case, this office did not receive the request for a decision within the ten business day period mandated by section 552.301(a). Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). However, the assertion of Health and Safety Code section 773.091 provides a compelling reason to overcome the presumption of openness. See 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 contend that the submitted information is confidential pursuant to section 773.091(b). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, section 552.101 encompasses statutes that govern confidentiality. Section 773.091 of the Health and Safety Code provides, in 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.

(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.

Thus, section 773.091(b) protects EMS reports from disclosure except for the information specifically listed as not confidential in section 773.091(g). You explain that the information consists of records of the identity, evaluation, or treatment of patients by city emergency medical services personnel. In our opinion, assuming that the submitted EMS information was prepared by certified emergency medical services personnel, it is generally made confidential by section 773.091(b). *See* Open Records Decision No. 598 (1991). It does not appear that the requestor has established any exception to confidentiality under chapter 773 of the Health and Safety Code. *See* Health & Safety Code § 773.092. Therefore, we conclude that, except for the information specified by section 773.091(g), the contents of the requested report are confidential under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. Accordingly, you must withhold the submitted EMS records under section 773.091(b) except for “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,” which must be released. *See* Health & Safety Code § 773.091(g).

This letter ruling is limited to the particular records at issue in this request and 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).

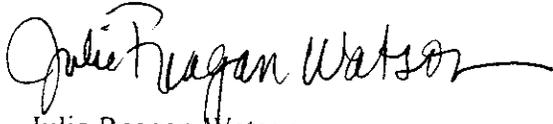
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/pr

Ref: ID# 138666

Encl. Submitted documents

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(w/o enclosures)