



September 15, 2000

Ms. Kathryn Boccella
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2000-3557

Dear Ms. Boccella:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139812.

The City of Austin (the "city") received a request for copies of photos, an incident report, supplements, notes, or any other documents relating to a specified incident at Northwest Park Pool. You state that most of the responsive information has been provided to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. We have considered the exception you claim and reviewed the submitted information.

You claim that records of the Emergency Medical Services Department ("EMS") and Austin Fire Department (the "department") regarding the medical call are excepted under section 552.101. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. 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. . .

Thus, we agree that, except for the information specified in subsection (g), the submitted information is confidential under section 773.091 and, therefore, may be released only in accordance with chapter 773 of the Health and Safety Code. *See* Health & Safety Code §§ 773.091-.094.¹ Therefore, you must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. However, you must release the information specified in section 773.091(g) of the Health and Safety 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,

¹We note that records that are confidential under section 773.091 may be disclosed 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." Health & Safety Code §§ 773.092(e)(4), .093. Section 773.093 provides that a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released.

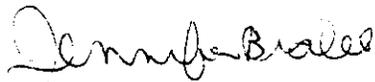
at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB\er

Ref: ID# 139812

Encl: Submitted documents

cc: Mr. Ken Bates
Bates Investigations
4131 Spicewood Springs Road, Suite J-2
Austin, Texas 78759-8600
(w/o enclosures)