



December 20, 2000

Mr. Lloyd Garza  
Assistant City Attorney  
City of Killeen  
402 North 2<sup>nd</sup>  
Killeen, Texas 76541-5298

OR2000-4791

Dear Mr. Garza:

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# 142404.

The City of Killeen Police Department (the "department") received a request for information regarding the death of a named individual on July 16, 2000. You indicate that the department has released some of the responsive information. You have submitted for our review the information that is responsive to the request, identified by you as attachment E and separated by tabs numbered 1 through 15. You assert that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first address certain information contained in the tabs numbered 6, 7, 10, and 14. Tab 6 contains emergency medical services ("EMS") records of the deceased. EMS records are governed by the Emergency Medical Services Act, chapter 773 of the Health and Safety Code. Section 773.091 provides:

(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.

This confidentiality "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." *Id.* § 773.091(g). Section 773.092(e)(4) provides for an exception to confidentiality for "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf." Among the individuals authorized to act on the patient's behalf in providing written consent is a "personal representative" if the patient is deceased. Health and Safety Code § 773.093; *see also* Open Records Decision No. 632 (1995). In the present situation, the requestor is an insurance claims examiner and the request itself contains a written consent from the claimant. However, we are unable to ascertain whether the claimant is a personal representative of the deceased. We also note that the written consent 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. *Id.* Thus, if the department receives a proper written consent that complies with the requirements of section 773.093, the department may release to the requestor the EMS records contained in tab 6 of the submitted documents. Otherwise, these records are confidential as provided by section 773.091 of the Health and Safety Code, except for "information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence" of the deceased patient.

Tab 7 contains an autopsy report. Autopsy reports must be disclosed, in that they are expressly made public by the Code of Criminal Procedure.<sup>1</sup> *See* Code Crim. Proc. art. 49.25, § 11. We understand from your correspondence to the requestor that the autopsy report has been released to the requestor.

Tab 10 contains a custodial death report. In Open Records Decision No. 521 at 5 (1989), this office concluded that under article 49.18(b) of the Code of Criminal Procedure, in conjunction with a directive issued by the Office of the Attorney General, section one of a custodial death report filed with this office is public information, but sections two through five of the report, as well as attachments to the report, are confidential. *See* Code Crim. Proc. art. 49.18(b) (attorney general shall make report, with exception of any portion of report that attorney general determines is privileged, available to any interested person). Thus, the department must release section one of the custodial death report to the requestor. However, because sections two through five of the report and attachments thereto are deemed confidential under article 49.18(b), the department must not release the remaining portions of the custodial death report.

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<sup>1</sup>The Public Information Act's exceptions do not, as a general rule, apply to information expressly made public by other statutes. Open Records Decision No. 525 (1989).

Tab 14 contains a press release, which evidently was voluntarily released to the public by the department on July 16, 2000. Section 552.007 of the Act prohibits selective disclosure in providing that information that a governmental body has voluntarily made available to any member of the public "must be made available to any person." Gov't Code § 552.007(b). Thus, the press release must be released to the requestor.

As to the remaining documents, you assert the applicability of section 552.108(a)(2). Section 552.108 states in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. You state that after the investigation and presentation to a grand jury, the grand jury "returned a 'no bill.'" You further indicate that the department has received no indication of a federal review of the matter, that no civil litigation has been initiated, and that no litigation is pending. Based on our understanding that the matter has reached a final result other than conviction or deferred adjudication, we agree that you have demonstrated the applicability of section 552.108(a)(2) to the remaining documents. We accordingly conclude, except as otherwise noted below, that the department may withhold this information under section 552.108 of the Government Code.

We note that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of an offense report. Gov't Code § 552.108(c); *see Houston Chronicle*, 531 S.W.2d at 187. You indicate that this information has been released to the requestor. *See also* Open

Records Decision No. 127 (1976) (summarizing the types of information that constitute basic information).

In summary, except for the types of information described in section 773.091(g) of the Health and Safety Code, the EMS records are confidential and may only be released in accordance with section 773.093 of the Health and Safety Code. The autopsy report in tab 7, section one of the custodial death report in tab 10, and the press release in tab 14 are subject to release to the requestor in their entirety. Except for the basic information which must be released, the remaining information may be withheld pursuant to section 552.108 of the Act.

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).

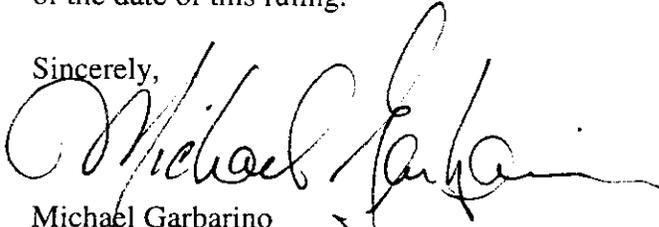
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

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 Hadassah Schloss at 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,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 142404

Encl. Submitted documents

cc: Ms. Cindy Huynh  
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(w/o enclosures)