OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 4, 2001

Mr. Gary W. Smith
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2001-4467

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152806.

The City of Baytown (the "city") received a written request for, among other things, certain records pertaining to a particular EMS response.[1] You contend that the records you submitted to our office, or the highlighted portions thereof, are made confidential under sections 773.091 and 773.095 of the Health and Safety Code, and thus must be withheld from the public pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Section 773.091 of the Health and Safety Code provides in pertinent 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.
>
> . . . .

[1]We assume the city has released the other requested information to the requestor. *See* Gov't Code §§ 552.023, 301(e), .302.

> (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.

After reviewing the submitted records, we agree that the information you have highlighted in blue constitutes "[r]ecords of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician" that are made confidential pursuant to section 773.091(b). Accordingly, the city must withhold this information pursuant to section 552.101 of the Government Code, except to the extent that the records contain the types of information listed in subsection (g), which the city must release.

You have also highlighted in pink the information that you believe to be made confidential under section 773.095 of the Health and Safety Code, which provides as follows:

> (a) The proceedings and records of organized committees of hospitals, medical societies, emergency medical services providers, emergency medical services trauma systems, or first responder organizations relating to the review, evaluation, or improvement of an emergency medical services provider, a first responder organization, or emergency medical services personnel are confidential and not subject to disclosure by court subpoena or otherwise.
>
> (b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.
>
> (c) This section does not apply to records made or maintained in the regular course of business by an emergency medical services provider, a first responder organization, or emergency medical services personnel.

The information that you highlighted in pink reveals the "proceedings" of the city's Medical Management Committee of the city's Emergency Medical Service Division. We therefore conclude that the information you highlighted in pink is made confidential under section 773.095 of the Health and Safety Code, and therefore must be withheld from the public pursuant to section 552.101 of the Government 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).

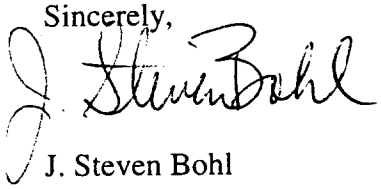
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/RWP/seg

Ref: ID# 152806

Enc. Submitted documents

c: Mr. William E. Schweinle, Jr.
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(w/o enclosures)