



October 23, 2001

Mr. Kevin E. Oliver  
Cooper & Scully  
900 Jackson Street, Suite 100  
Dallas, Texas 75202

OR2001-4821

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153815.

The City of Coppell (the "city"), which you represent, received a request for a copy of a specified accident/incident report and any other records concerning the incident. You assert that the submitted exhibits 2 and 3, or portions thereof, are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

At the outset, we note that a portion of the information in exhibit 3 constitutes medical records, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

We have marked the information that is governed by the MPA. *See* Open Records Decision Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). The medical records are confidential, but must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). The medical records we have marked may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

Next, we address the section 552.108 assertion for the remaining information. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. We understand you to represent that the requested information pertains to a concluded case, and that the case concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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, with the exception of any basic front page offense and arrest information, the city may withhold the remaining information from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

Finally, we understand you to ask a series of specific questions with regard to the basic information that, you acknowledge, is not excepted by section 552.108 and in this instance is subject to release. In response, we refer you to Open Records Decision No. 127, in which this office summarized the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 at 3-4 (1976). We advise that if the specific information at issue is not among the types of information listed as public in Open Records Decision No. 127, then the city in this instance has the discretion to withhold it under section 552.108(a)(2).<sup>1</sup>

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<sup>1</sup>In light of the applicability of section 552.108 to all of the remaining information other than basic information and the city's decision to withhold that information, we do not separately address those portions of the remaining information that are also protected under section 552.130, or that also otherwise are or may be confidential.

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,

A handwritten signature in black ink, appearing to read "Michael Garbarino", written over a faint, larger version of the same signature.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 153815

Enc: Submitted documents

cc: Mr. Raymond A. Williams, III  
8115 Preston Road, Suite 525, LB 27  
Dallas, Texas 75225  
(w/o enclosures)