



April 29, 2002

Mr. Darrell G-M Noga  
Cooper & Scully  
900 Jackson Street, Suite 100  
Dallas, Texas 75202

OR2002-2191

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162039.

The City of Coppell (the "city"), which you represent, received a written request for statistics and records pertaining to suicides and attempted suicides that occurred in the year 2001. You have supplied the requestor with the requested statistical information and state that the city does not possess any responsive records concerning successful suicides. You contend that the other responsive information held by the city is excepted from required public disclosure 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. Some of the documents you submitted to this office as being responsive to the request consist of EMS records made confidential under section 773.091 of the Health and Safety Code, which 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.

....

(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.

Health & Safety Code § 773.091(b), (g). We therefore conclude that the EMS records that we have marked are made confidential and must be withheld pursuant to section 773.091(b). However, to the extent that these records contain the types of information listed in subsection (g), that information must be released to the requestor.<sup>1</sup>

The remaining submitted records, which concern EMS calls where no patient was ever located, do not fall within the scope of section 773.091. Nor do these records come within the scope of section 611.002 the Health and Safety Code, which makes confidential “[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional.” See also Health & Safety Code § 611.001 (defining “patient” and “professional”). Similarly, because these records do not identify any individual requiring medical assistance, these records do not come within the protection of either constitutional or common-law privacy. Consequently, these records must be released in their entirety.

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

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<sup>1</sup>Because we resolve your request under section 773.091 of the Health and Safety Code, we do not address your other arguments for non-disclosure under section 552.101.

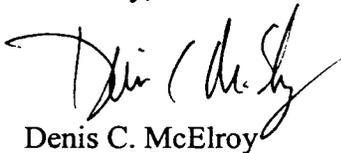
should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/RWP/sdk

Ref: ID# 162039

Enc: Submitted documents

c: Mr. Mike Halligan  
Executive Director  
Texas Mental Health Consumers  
7701 North Lamar, Suite 500  
Austin, Texas 78752  
(w/o enclosures)