



August 12, 2002

Ms. Stephanie H. Harris  
Assistant City Attorney  
City of Paris  
P.O. Box 9037  
Paris, Texas 75461-9037

OR2002-4428

Dear Ms. Harris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166980.

The City of Paris (the “city”) received two requests for twenty-seven categories of information relating to the city’s EMS services, as well as a request for five additional categories of information relating to an agreement for the provision of EMS services between the city and Lamar County (the “county”). You state that portions of one of the requests consist of fact questions or require the city to perform research or extractions of data. We note that the Public Information Act does not require a governmental body to answer factual questions nor does it require a governmental body to prepare new information. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 (1992), 555 (1990), 362 (1983). Nevertheless, the city must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975); see Gov’t Code § 552.353 (providing penalties for failure to permit access to public information). Therefore, you indicate that the city has released information that is responsive to most of the categories of the requests. Nevertheless, you indicate that the city does not have information responsive to several categories of the requests. We note that the Public Information Act does not require a governmental body to make available information which does not exist. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 (1992), 362 (1983). Furthermore, you claim that the information responsive to two other categories of the requests is excepted from disclosure under section 552.101 of the Government Code. We have considered the

exception you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received arguments from one of the requestors. *See* Gov't Code § 552.304.

We begin by addressing your arguments concerning the requested information regarding the number of transfers within the city and outside of the city for each fiscal year since 1998. You indicate that the city does not maintain a document listing the number of ambulance transports within the city versus outside of the city for each fiscal year. However, you state that the requested information can be obtained from individual "Prehospital Patient Care Reports" ("EMS reports"). One of the requestors disputes your contention that you do not differentiate between services to the city population and services to the non-city population. The requestor points to a provision of a 1998-99 contract between the city and the county in which the city agreed to furnish a quarterly report to the county that would break down emergency calls and transfer calls by city and county. You state that "[t]he City can find no record of having ever filled out or submitted any of the . . . quarterly reports to the County." When a governmental body does not maintain information in the format requested, the governmental body is not required to compile or extract information from existing records to produce the information in the requested format. *See* Open Records Decision Nos. 465 (1987), 243 (1980). Rather, the governmental body need only produce the information in existence at the time of the request. ORDs 605, 362. We understand you to assert that the city does not maintain documents that demonstrate the number of transfers made within the city versus outside of the city during each fiscal year, but that the information can be made available by giving the requestors access to individual EMS reports. Based on your contentions, we agree that the city need not compile new information in response to the request for information regarding transfers within the city and outside of the city; rather, the request for information regarding transfers within the city and outside of the city will be treated as a request for individual EMS reports. *See* ORDs 465, 243.

You contend that the EMS reports are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 773.091 of the Health and Safety Code 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.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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). It does not appear that any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code apply in this instance. Accordingly, the city must withhold the submitted EMS reports under section 552.101 of the Government Code, except for information required to be released under section 773.091(g).

You also contend that the trauma data responsive to item twenty of the requests is confidential under section 773.091 of the Health and Safety Code. We agree that the trauma data consists of a record "of the identity, evaluation, or treatment of a patient by emergency medical services personnel." It does not appear that any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code apply in this instance. Furthermore, the trauma data does not contain any information listed in section 773.091(g). Therefore, the city must withhold the trauma data in full under section 773.091.<sup>2</sup>

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).

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<sup>2</sup>Based on this finding, we need not reach your remaining arguments for withholding the trauma data.

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); *Tex. Dep't of Pub. 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 166980

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