



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 3, 2003

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2003-0708

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175891.

The El Paso Police Department (the "department") received a request for a copy of the taped 9-1-1 call(s) from a specified location on a specific date. The requestor also seeks a copy of the dispatch log concerning the incident that is the subject of the 9-1-1 tape. You state that the department has released a redacted copy of the computer-aided dispatch ("CAD") report to the requestor. You contend that the redacted information is made confidential under chapter 772 and section 773.091 of the Health and Safety Code, and thus must be withheld from the public pursuant to section 552.101 of the Government Code. Additionally, you contend that the tape recording of the 9-1-1 call reporting the incident is excepted from disclosure under section 552.108 of the Government Code, along with additional redacted information from the CAD report. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Access to emergency medical services ("EMS") records is governed by the provisions of section 773.091 of the Health and Safety Code. Open Records Decision No. 598 (1991). Section 773.091 of the Health and Safety Code, the Emergency Medical Services Act, provides:

- (a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(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(a), (b), (g). The submitted documents include information regarding the treatment of a patient by EMS personnel. You state that the submitted documents reflect information relayed by the paramedics who were at the scene providing emergency medical treatment to the patient. It does not appear that any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code apply. Accordingly, the department must withhold the information you highlighted in lilac under section 773.091(b) of the Health and Safety Code in conjunction with 552.101 of the Government Code, except for information required to be released under section 773.091(g).

Section 552.101 also encompasses chapter 772 of the Health and Safety Code. Section 772.318 of the Health and Safety Code makes confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Based on your representation that the 9-1-1 communication district that serves the department in fact was established in accordance with chapter 772 and that the telephone numbers and addresses highlighted in yellow were provided by the 9-1-1 communication district, we agree that the department must withhold the information you highlighted in yellow in the CAD report pursuant to section 772.318(c) of the Health and Safety Code.

We now turn to your argument for exception of the 9-1-1 tape from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) of the Government Code exempts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because the release of such information presumptively would interfere with the detection, investigation, or prosecution of crime. *See 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). You state that the tape

recording of the 9-1-1 call pertains to a pending criminal investigation. We therefore conclude that the department may withhold the tape recording in its entirety pursuant to section 552.108(a)(1) of the Government Code.

You also assert section 552.108 for a police officer's cellular telephone number that appears in the CAD report. Section 108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), 301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the cellular telephone associated with the cellular telephone number is paid for by the city and is used for official police business only. You further state that "the release of the cellular phone numbers assigned to police officers, particularly sergeants with significant investigative and supervisory responsibilities, will interfere with their law enforcement and law enforcement-related duties. These supervisors are in a position with great responsibility and they need to have their pagers and cellular phones available for use during investigations and in times of emergency responses." We conclude that the department has shown that the release of the police officer's cellular telephone number would interfere with the detection, investigation, or prosecution of crime. *See* Open Records Decision No. 506 (1988). Thus, the department may withhold from public disclosure the cellular telephone number you highlighted in pink in the CAD report based on section 552.108(b)(1).

In summary, the department must withhold the EMS information that you highlighted in lilac in the CAD report under section 773.091(b) of the Health and Safety Code in conjunction with section 552.101 of the Government Code, except for information required to be released under section 773.091(g). The department must also withhold the originating telephone numbers and addresses of 9-1-1 callers that you highlighted in yellow in the CAD report pursuant to section 772.318(c) of the Health and Safety Code in conjunction with section 552.101. The department may withhold the submitted audio tape in its entirety pursuant to section 552.108(a)(1) of the Government Code, along with the cellular telephone number you highlighted in pink in the CAD report under section 552.108(b)(1).

You also seek a previous determination with respect to:

1. pager and cellular telephone numbers of city owned pagers and cellular phones assigned to El Paso police officers to be used for official police business; and
2. originating addresses and telephone numbers of 9-1-1 callers furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code.

With regard to request number one, this letter ruling shall serve as a previous determination under section 552.301(a) that pager and cellular telephone numbers of city owned pagers and cellular telephones assigned to El Paso police officers to be used for official police business are excepted from public disclosure under section 552.108(b)(1) of the Government Code unless they are contained in a document made expressly public under a subsection of section 552.022 other than subsection 552.022(a)(1). As for request number two, also pursuant to section 552.301 of the Government Code, the department may rely on this ruling as a previous determination that originating telephone numbers and addresses of 9-1-1 callers furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code are confidential under section 772.318 of the Health and Safety Code and thus excepted from disclosure under section 552.101 of the Government Code.

These previous determinations apply only to the information described above. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to these types of information requested of the department. *See id.*

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. 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 of 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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 175891

Enc: Submitted documents

c: Mr. Louie Gilot, Reporter
El Paso Times
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(w/o enclosures)