



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2003

Mr. G. Chadwick Weaver
First Assistant City Attorney
City of Midland
P. O. Box 1152
Midland, Texas 79702-1152

OR2003-7563

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189763.

The City of Midland (the "city") received a request for documents, photographs, and/or videos related to a specified accident report, and a copy of the autopsy report performed on the deceased. You state that some information has been made available to the requestor. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note at the outset that the city did not submit the requested autopsy report for our review. We therefore presume that the city has already provided the requestor with this information to the extent that it exists. If not, the city must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

You state that Exhibit B contains medical records subject to section 159.002 of the Occupations Code. We note, however, that Exhibit B consists of an Emergency Medical Services ("EMS") record, not medical records. Access to the EMS record at issue 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 in 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 and Safety Code 773.091(b), (g). Thus, the EMS Activity Report, except for the information specified in subsection (g), is deemed confidential by section 773.091 and, therefore, may be released only in accordance with chapter 773 of the Health and Safety Code. *See* Health & Safety Code §§ 773.091–.094. We note that records that are confidential under section 773.091 may be disclosed to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf for the release of confidential information.” Health & Safety Code §§ 773.092(e)(4), .093. Section 773.093 provides that a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. Therefore, if section 773.092 applies, the city must release the EMS records to the requestor. *See* Health & Safety Code §§ 773.092, .093; Open Records Decision No. 632 (1995). Otherwise, except as provided by section 773.091(g), the city must withhold the EMS records under section 773.091(b) of the Health and Safety Code in conjunction with section 552.101 of the Government Code. Because you claim no other exception to disclosure for the EMS records, the information specified by section 773.091(g) must be released.

You argue that Exhibit C is excepted from disclosure pursuant to section 552.108 of the Government Code. 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. You state that the reported incident did not result in a conviction or deferred adjudication, and that the investigation has concluded and the case is closed. Thus, based on your representations and our review of the submitted information, we agree that section 552.108(a)(2) is applicable to this exhibit.

However, section 552.108 does not except from disclosure 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, the city must release the types of information that are considered to be front page report information, including a detailed description of the offense, regardless of whether such information is actually located on the front page of an offense report. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Although section 552.108(a)(2) authorizes the city to withhold the remaining information in Exhibit C, it may choose to release all or part of it that is not otherwise confidential by law. See Gov't Code § 552.007.¹

In summary, we conclude that if section 773.092 of the Health and Safety Code applies, the city must release the EMS records to the requestor. If not, the city must withhold these records, except for the information specified by section 773.091(g), which must be released. Finally, except for basic information, which must be released, the city may withhold Exhibit C under section 552.108(a)(2) 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

¹As we are able to make this determination with respect to Exhibit C, we need not address your remaining arguments.

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 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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 189763

Enc. Submitted documents

c: Mr. Ray Allen
Allen & Allen
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(w/o enclosures)