



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2005

Mr. John Patterson  
Assistant City Attorney  
City of Waco  
Legal Services  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2005-01205

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 218248.

The City of Waco (the "city") received a request for information concerning two specific incidents, including 9-1-1 recorded calls. You state that you will release some information to the requestor but claim that other requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We initially note that the submitted information includes a document that has been filed with a court. Pursuant to section 552.022(a)(17) of the Government Code, documents filed with a court must be released unless they are confidential under other law. You claim that this document is excepted from disclosure under section 552.108. However, section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. As such, section 552.108 is not other law that makes information confidential for the purposes of section 552.022(a)(17). *See* Open Records Decision No. 177 (1977) (law enforcement exception may be waived by governmental body); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the marked court document must be released under section 552.022(a)(17).

You claim that Exhibit 6 pertains to emergency medical services (“EMS”). Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses section 773.091 of the Health and Safety Code. That section 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.

Health & Safety Code § 773.091 (emphasis added).

We note that the records at issue concern a deceased individual and state that “[l]ife support [was] not started.” The term “patient” is not defined for purposes of section 773.091 of the Health and Safety Code. When a word used in a statute is not defined and that word is “connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art.” Gov’t Code § 312.002; *see also Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 485 (Tex. 1998). Taber’s Cyclopedic Medical Dictionary defines “patient” as “one who is sick with, or being treated for, an illness or injury; [or] . . . an individual receiving medical care.” Taber’s Cyclopedic Medical Dictionary 1446 (17<sup>th</sup> ed. 1989). We also note that other statutes dealing with medically related professions generally define patient as an individual who consults a health care professional. *See* Health & Safety Code § 611.001 (mental health records), Occupations Code §§ 159.001 (physician records), 201.401 (chiropractic records), 202.401 (podiatric records), 258.101 (dental records). Because the generally excepted medical definition of patient indicates that the term refers to a living individual, we find that it does not encompass the records at issue here. Therefore, we find that Exhibit 6 is not made confidential by section 773.091 and may not be withheld on that basis. As you claim no other exception for this information and it is not otherwise confidential by law, it must be released.

We now turn to your arguments regarding the remaining submitted information. Section 552.108(a)(1) excepts for disclosure information held by a law enforcement agency 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. *See* Gov’t Code §§ 552.108(a)(1). A governmental body that claims information is excepted from disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *See* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You explain that Exhibits 3 and 4 and the CDs, DVDs, and videotape relate to pending criminal investigations. Based upon these representations and our review, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases).

We note, however, that section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c); *see Houston Chronicle*, 531 S.W.2d at 185; *see also* Open Records Decision No. 127 at 3-5 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Types of information considered basic include a detailed description of the crime and the arrestee's social security number. *See* Open Records Decision No. 127 at 3-5. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Although the arrestee's social security number is basic information, it must be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential a social security number and a related record that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the file is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Government Code on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, other than basic information, Exhibits 3 and 4 and the CDs, DVDs, and videotape may be withheld under section 552.108(a)(1) of the Government Code. Additionally, the social security number may be confidential under federal law. The remaining submitted information must be released to the requestor.

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).

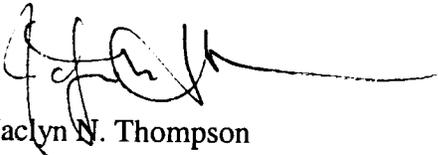
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *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,



Jaclyn W. Thompson  
Assistant Attorney General  
Open Records Division

JNT/jev

Ref: ID# 218248

Enc. Submitted documents

c: Mr. Richard Ferguson  
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(w/o enclosures)