



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2005

Mr. T. Daniel Santee II
Assistant City Attorney
City of Abilene
P. O. Box 60
Abilene, Texas 79604

OR2005-06680

Dear Mr. Santee:

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# 228842.

The City of Abilene (the "city") received two requests from the same requestor for "the call sheet and 911 call for the Allsup's" at a particular address on a specified date, and for the "EMS run report" related to the same incident. You state that some responsive information has been provided to the requestor. You claim that the remaining requested information is exempted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Some of the submitted documents consist of emergency medical services ("EMS") records. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ This section encompasses information protected by other statutes, such as the Emergency Medical Services Act, ch. 773 of the Health and Safety Code. Section 773.091 provides:

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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). Confidential EMS records may be released to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf.” Health & Safety Code § 773.092(e)(4). When a patient is deceased, his personal representative may consent to the release of his records. Health & Safety Code § 773.093(a); *see also* Open Records Decision No. 632 (1995) (defining “personal representative” for purposes of EMS Act). This consent must be written and signed by the patient, authorized representative, or personal representative and must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Health & Safety Code § 773.093(a). Accordingly, except for information enumerated in section 773.091(g), the EMS records we have marked are confidential under section 773.091(b) of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. However, the city must release them upon receipt of proper consent pursuant to section 773.093(a). *See* §§ 773.092, .093; ORD 632.

We now turn to your argument under section 552.108 of the Government Code regarding the remaining submitted information, including the information not made confidential under section 773.091(g). 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 the information at issue relates to a pending criminal investigation. Based upon your representation 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. *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.

In summary, we conclude that the city must withhold the marked EMS records, except for that information that section 773.091(g) makes public, under section 773.093 of the Health & Safety Code. However, the city must release these records upon receipt of proper consent pursuant to section 773.093(a). With the exception of basic information which must be released, the city may withhold the remaining information under section 552.108 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, 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

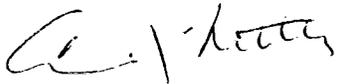
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 228842

Enc. Submitted documents

c: Ms. Barbara Anderson
c/o City of Abilene
P. O. Box 60
Abilene, Texas 79604
(w/o enclosures)