ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2006

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P. O. Box 469002
Garland, Texas 75046-9002

OR2006-08962

Dear Mr. Mann:

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# 256177.

The Garland Police Department (the "department") received a request for a specific EMS report. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. Section 773.091 is applicable to records of the provision of emergency medical services ("EMS") and provides in part:

> (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.
>
> (c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(a)-(c). Section 773.091 further provides, however, that

> [t]he 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.

Id. § 773.091(g). Thus, except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See* Health & Safety Code §§ 773.091-.094. We note, however, that records that are confidential under section 773.091 may be disclosed to individuals, corporations, or governmental agencies involved in the payment or collection of fees for emergency medical services rendered by emergency medical services personnel. *Id.* § 773.092(e)(7). Therefore, if section 773.092 applies in this instance, the department must release the submitted EMS report to the requestor. *See* Health & Safety Code § 773.092. Otherwise, the department must withhold the EMS report pursuant to section 773.091(b) of the Health and Safety Code, except for the information that is not confidential under section 773.091(g).

With regard to the information that is subject to section 773.091(g), we address your argument under section 261.201(a) of the Family Code[1], which provides as follows:

> (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
>
> > (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
> >
> > (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in

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[1]Section 552.101 also encompasses section 261.201 of the Family Code.

> an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You claim that the submitted EMS report is part of the department's investigation of an alleged injury to a child, and is thus subject to section 261.201. Based on this representation, we find that the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. *See* Fam. Code § 261.001 (defining "abuse" and "neglect" for purposes of Family Code, ch. 261). Thus, this information is within the scope of section 261.201 of the Family Code. You do not inform us that the department has adopted any rules that govern the release of this type of information. Thus, we assume that no such rules exist. Therefore, we find that the information subject to section 773.091(g) is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, if section 773.092 applies in this instance, the department must release the submitted EMS report to the requestor. Otherwise, the department must withhold the EMS report pursuant to section 773.091(b) of the Health and Safety Code, except for the information that is not confidential under section 773.091(g). That information is confidential under section 552.101 in conjunction with section 261.201 of the Family Code if the requestor does not have a right of access to the EMS report under section 773.092 of the Health and Safety 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); *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 Office of the Attorney General 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. 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,

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 256177

Enc. Submitted documents

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(w/o enclosures)