



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2007

Ms. Lizabeth Islas Plaster
Assistant City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9002

OR2007-09015

Dear Ms. Plaster:

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# 284070.

The City of Lewisville (the "city") received a request for all information pertaining to case report number 07-12799. You have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the submitted records constitute emergency medical service ("EMS") records. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by the Emergency Medical Services Act, sections 773.091 through 773.173 of the Health and Safety Code, which governs access to EMS records. *See* Open Records Decision No. 598 (1991). Section 773.091 of 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 & Safety Code § 773.091(b), (g). We have marked the documents that constitute EMS records pursuant to section 773.091. We note, however, 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.” *Id.* §§ 773.092(e)(4), .093. Among the individuals authorized to act on the patient’s behalf in providing written consent is a “personal representative” if the patient is deceased. *Id.* 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. Accordingly, if the requestor provides sufficient evidence that they are the deceased’s authorized representative, then the city must release the EMS documents, which we have marked, to the requestor in their entirety. *See id.* §§ 773.092, .093; *see also* Open Records Decision No. 632 (1995). If the requestor does not provide the proper authorization, then, with the exception of the information subject to section 773.091(g), the city must withhold the marked EMS documents under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

You assert that the remaining information, including the information subject to section 773.091(g) of the Health and Safety Code, is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime. . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.[.]” Gov’t Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information pertains to a concluded investigation that was no-billed by a grand jury. Based on your representations, we conclude that section 552.108(a)(2) is applicable in this instance.

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). Basic information refers to

the information held to be public in *Houston Chronicle*. The city must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). You may withhold the remaining information under section 552.108.

In summary, if the requestor does not provide the proper authorization, then, with the exception of the information subject to section 773.091(g), the city must withhold the marked EMS documents under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. Except for basic information, the city may withhold the remaining information under section 552.108(a)(2).

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,

A handwritten signature in black ink that reads "Justin D. Gordon". The signature is written in a cursive style with a large initial "J" and "G".

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 284070

Enc. Submitted documents

c: The Herbert Family
820 North 8th Street
Rochelle, Illinois 61068
(w/o enclosures)