



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 5, 2008

Mr. Michael R. Burkett  
Garrett & Burkett  
101 Summit Avenue Suite 400  
Fort Worth, Texas 76102

OR2008-01704

Dear Mr. Burkett:

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# 301366.

The White Settlement Police Department (the "department"), which you represent, received requests from two requestors for (1) information provided to the Texas Department of State Health Services by a named detective and (2) information relating to the second requestor. You have submitted information that the department seeks to withhold under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.<sup>1</sup> We assume that the department has released any other information that is responsive to these requests, to the extent that such information existed when the department received the requests. If not, then any such information must be released immediately.<sup>2</sup> See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 773.0612 of the Health

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<sup>1</sup>It is not clear to this office that the initial conversation on the submitted CD is responsive to either of these requests for information. This decision does not address the public availability of any information that is not responsive to these requests, and any such information need not be released.

<sup>2</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

and Safety Code. Subchapter C of the Emergency Medical Services Act, chapter 773 of the Health and Safety Code, governs the licensing, certification, and qualifications of emergency medical services personnel. *See* Health & Safety Code § 773.041 *et seq.* Section 773.0612 provides in part that “[a] report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with the rules adopted by the [Texas Board of Health].” *Id.* 773.0612(b).

You explain that the submitted information consists of a complaint that the department submitted to the EMS Compliance Group of the Department of State Health Services (“DSHS”) and a recording of a detective’s discussion of the complaint with a representative of DSHS. You inform us that the complaint involves the conduct of an emergency medical technician. You state that DSHS is investigating the complaint, which DSHS considers to be confidential. Based on your representations and our review of the information at issue, we find that the information constitutes reports, records, or working papers used or developed in an investigation under section 773.0612 of the Health and Safety Code. We therefore conclude that the submitted information is confidential under section 773.0612 and must be withheld from the requestors on that basis under section 552.101 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

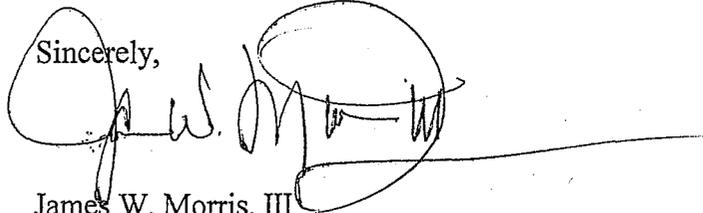
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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, appearing to read 'James W. Morris, III', written over a horizontal line.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 301366

Enc: Submitted documents

c: Ms. Christie Shields  
c/o Mr. Michael R. Burkett  
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