



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2008

Mr. Robert E. Reyna
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2008-04056

Dear Mr. Reyna:

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# 305749.

The City of San Antonio (the "city") received a request for nine categories of information, including all reports generated from a specified emergency medical services ("EMS") call, whether there existed a mechanical problem with the EMS unit, whether there have been any complaints or investigations involving this EMS call, and information as to who is conducting such an investigation. You claim that the submitted 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.

Initially, we note that you have not submitted information responsive to the request for information pertaining to whether there existed a mechanical problem with the EMS unit, whether there have been any complaints or investigations involving this EMS call, and information as to who is conducting such an investigation. To the extent information responsive to these three categories of information existed on the date that the city received the instant request, we assume that information has been released to the requestor. If the city has not released any such information, the city must release it to the requestor at this time. *See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

The city argues the submitted information must be withheld under section 552.101 of the Government Code, which excepts from public 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. Section 773.091 of the Health and Safety Code provides in relevant 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). You inform us that the submitted information was created by EMS personnel. Based on your representation, we conclude that a portion of the submitted information, which we have marked, is confidential under section 773.091. Further, you do not inform us that the exceptions to confidentiality set forth in section 773.092 and the consent provisions in section 773.093 of the Health and Safety Code apply in this instance. Therefore, with the exception of information subject to section 773.091(g), which must be released, the city must withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. However, you have failed to demonstrate how the remaining information at issue constitutes records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision. Therefore, the remaining information is not confidential under section 773.091 of the Health and Safety Code, and it may not be withheld under section 552.101 of the Government Code on this basis. As you raise no further exceptions against the disclosure of this information, it must be released.

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,



Chanita Chantaplin-McLelland
Assistant Attorney General
Open Records Division

CC/mcf

Ref: ID# 305749

Enc. Submitted documents

cc: Mr. Brian Mylar
KSAT-12 Defenders
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(w/o enclosures)