



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 15, 2008

Ms. Angela M. DeLuca  
Assistant City Attorney  
City of College Station Legal Department  
P.O. Box 9960  
College Station, Texas 77842

OR2008-04993

Dear Ms. DeLuca:

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# 307412.

The College Station Police Department (the "department") received a request for a specific police report and all medical information related to a specific incident. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 section encompasses information protected by other statutes. The Emergency Medical Services Act, sections 773.091 through 773.173 of the Health and Safety Code, governs access to emergency medical service ("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). 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 id.* §§ 773.091-.094. 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. 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. *Id.* § 773.093(a). Thus, the department must withhold the EMS records under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g).<sup>1</sup> However, the department must release these EMS records on receipt of proper consent under section 773.093(a). *See id.* §§ 773.092, .093; ORD 632.

You state that section 552.108 prevents disclosure of the submitted incident report. This section excepts from disclosure “information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . that did not result in conviction or deferred adjudication.” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the information contained in report number 07-006399 pertains to an investigation that concluded without any criminal charges being filed. We agree that section 552.108(a)(2) is applicable to report number 07-006399.

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex.Civ.App.—Houston [14<sup>th</sup> Dist.] 1975), *writ ref’d n.r.e. per curium*, 536 S.W.2d 559 (Tex. 1976); *see also* Open

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold the submitted incident report pursuant to section 552.108.

In summary, with the exception of the information specified by section 773.091(g), which must be released, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. However, the department must release the EMS records on receipt of proper consent under section 773.093(a). With the exception of basic information, the department may withhold the submitted incident report pursuant to 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 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 "Chris Schulz", written over a horizontal line.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/jb

Ref: ID# 307412

Enc. Submitted documents

c: Mr. Nathan A. Brown  
9017 CR 247  
Caldwell, Texas 77936  
(w/o enclosures)