



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2008

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P. O. Box 1952
Longview, Texas 75606

OR2008-05845

Dear Mr. Ray:

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# 308930.

The Longview Police Department (the "department") received two requests for information pertaining to a specified fatal automobile accident. You claim that the submitted records are excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 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 chapter 773 of the Health and Safety Code, which pertains to emergency medical service ("EMS") records. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. *See* Open Records Decision No. 598 (1991). Section 773.091 provides in part the following:

(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). Upon review, we agree that the documents you have marked constitute confidential EMS records. In this instance, however, it appears that one of the requestors represents a personal representative of a deceased EMS patient. We note 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.” Health & Safety Code §§ 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. Thus, except for the information subject to section 773.091(g), which is not confidential, the department may only release the EMS records at issue upon receipt of proper consent under section 773.093(a). *See id.* §§ 773.092, .093.¹

With regard to the remaining information at issue, including the information subject to section 773.091(g), you raise section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108 (a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that portions of the submitted information relate to a pending criminal investigation being conducted by the department. Based upon this representation and our review of the information at issue, we conclude that the release of the information you marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted EMS records.

department may withhold the information you have marked pursuant to section 552.108(a)(1) of the Government Code.²

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license or permit, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a). Accordingly, from the remaining information, the department must withhold the information you have marked under section 552.130. As stated above, however, one of the two requestors may represent an individual who has an ownership interest in one of the vehicles involved in the traffic accident at issue. Thus, this requestor may have a right of access to the vehicle identification number and license plate number of this vehicle. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, we rule conditionally. To the extent that this requestor represents an individual with an ownership interest in the vehicle at issue, the department must release the vehicle identification number and license plate number of that vehicle to this requestor. To the extent that this requestor does not have a right of access under section 552.023, the department must withhold the remaining information you have marked under section 552.130.

In summary, the department may only release the EMS records at issue upon receipt of proper consent under section 773.093(a) of the Health and Safety Code. From the remaining information at issue, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. To the extent one of the requestors represents an individual with an ownership interest in one of the vehicles involved in the traffic accident, the department may not withhold any information regarding this vehicle from this requestor under section 552.130 of the Government Code.³ Otherwise, the department must withhold the remaining information it marked under section 552.130. The remaining information must be released to the requestor.

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³We note that in this instance, because the requestor has a special right of access to this information, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 308930

Enc. Submitted documents

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