



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2008

Ms. Mindy Ward
City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR2008-09872

Dear Ms. Ward:

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# 316824.

The City of San Angelo (the "city") received a request for the city's fire and EMS dispatch logs and patient care reports for all patients transported from the West Texas Renal Care Center to any hospital facility from January 1, 2008 through April 30, 2008. You state the city has released some of the responsive information, but claim 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.

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, chapter 773 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). This confidentiality “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.” *Id.* § 773.091(g). We agree the submitted information constitutes EMS records pursuant to section 773.091. However, we note that records that are confidential under this section may be disclosed to “governmental agencies if the disclosure is required or authorized by law[.]” *See id.* § 773.092(e)(2).

In this instance, the requestor is an investigator with the Department of State Health Services (“DSHS”). The requestor has informed the city that DSHS seeks the requested information as part of an investigation pursuant to chapter 773 of the Health and Safety Code. Section 773.0612 of the Health and Safety Code provides:

(a) The department or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification or an applicant for a certification or license is considered to have given consent to a representative of the department entering and inspecting a vehicle or place of business in accordance with this chapter.

(b) 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 board.

Id. § 773.0612. Because the submitted information is directly related to patient care and the requestor is conducting an investigation under chapter 773, we conclude that section 773.0612 applies to this information. We therefore determine that the requestor has a statutory right of access to the information under section 773.0612(a) of the Health and Safety Code. Thus, the city may not withhold this information from the requestor pursuant to section 552.101 in conjunction with section 773.091 of the Health and Safety Code. *See id.* § 773.092(e)(2) (providing for release of confidential EMS records to governmental

agencies where disclosure is required or authorized by law). Consequently, pursuant to section 773.0612(a), the city must release the submitted information to the requestor.¹

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). If the governmental body does not file suit over 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.

¹We note that information obtained by DSHS pursuant to section 773.0612(a) is confidential in the hands of DSHS. See Health and Safety Code § 773.0612(b).

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,



Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/mcf

Ref: ID# 316824

Enc. Submitted documents

c: Mr. Patrick Cambell
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(w/o enclosures)