



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 3, 2009

Mr. Ronald J. Bounds  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2009-07616

Dear Mr. Bounds:

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# 345007.

The City of Corpus Christi (the "city") received two requests for information pertaining to an incident at a named location involving the death of a named individual. You state you have released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by one of the requestors. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note the second requestor asserts that the city failed to comply with its procedural obligations under subsections 552.301(b) and 552.301(e-1) of the Government Code. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *Id.* § 552.301(a), (b). The city received the second request on March 25, 2009. Pursuant to section 552.301(b), the city requested a ruling with respect to the second request and stated the exceptions that applied on March 30, 2009. Accordingly, we conclude that the city complied with section 552.301(b) of the Government Code.

However, section 552.301(e-1) states that a governmental body that submits written comments to the attorney general under subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body. *Id.* § 552.301(e-1). On March 27, 2009, the city requested a ruling in response to a request from the first requestor. The city argued that the submitted information should be withheld from the first requestor under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code and section 552.130 of the Government Code. On March 30, 2009, the city requested a ruling on the same information after receiving a request from the second requestor. The city stated in its March 30 letter to this office and to the second requestor that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code, and the city is relying on “the same arguments and supporting documentation that was submitted to the Attorney General for review in that prior request for a decision.” However, neither the March 27 letter nor the arguments contained therein, were included in the city’s March 30 letter to the second requestor. Therefore, because the city failed to send the second requestor a copy of the city’s comments pertaining to the information at issue, we find the city has failed to comply with the requirements of section 552.301(e-1).

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). You claim that portions of the submitted information are confidential under sections 552.101 and 552.130 of the Government Code. Because the application of sections 552.101 and 552.130 can provide compelling reasons for non-disclosure under section 552.302, we will consider your claims under these provisions for the information at issue.

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, including chapter 773 of the Health and Safety Code, which pertains to Emergency Medical Services (“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.

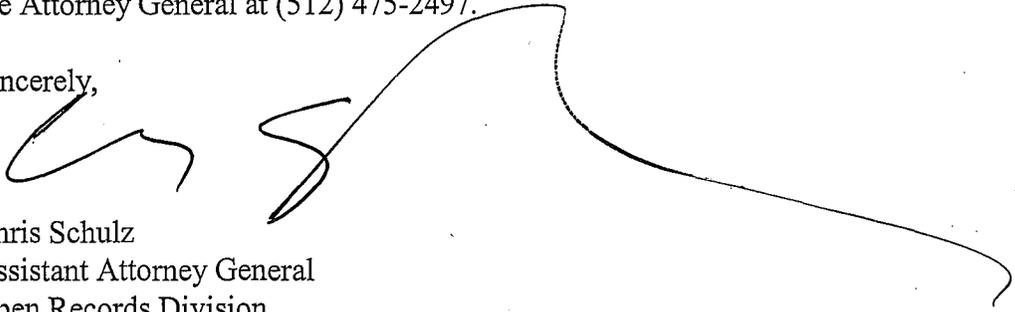
Health & Safety Code § 773.091(b), (g). You assert portions of the submitted information, which you have marked, are confidential under section 773.091. However, the information you have marked pertains to the city fire department's response and investigation into the incident at issue. Further, you have not demonstrated that the marked information was taken directly from an EMS record. Therefore, the information you have marked is not subject to section 773.091 of the Health and Safety Code and may not be withheld under section 552.101 on this basis.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130(a)(1)-(2)*. Thus, the city must withhold the information you have marked, as well as the additional information we have marked, under section 552.130. As you raise no further exceptions against disclosure, the remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 345007

Enc. Submitted documents

c: Requestor  
(w/o enclosures)