



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 28, 2009

Mr. Gary Henrichson  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR2009-15323

Dear Mr. Henrichson:

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# 359742 (ORR No. W001078-080609).

The City of McAllen (the "city") received a request for five categories of information relating to a named city employee and an accident in which he was involved. You inform us that the city has no documents that are responsive to the request for the ambulance company's report.<sup>1</sup> You also inform us that some of the requested information has been released. You seek to withhold other responsive information under sections 552.101, 552.117, and 552.130 of the Government Code and Texas Rule of Evidence 509.<sup>2</sup> We have considered your

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<sup>1</sup>We note that the Act does not require the city to release information that did not exist when it received this request, create responsive information, or obtain information that is not held by the city or on its behalf. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Although the city does not expressly raise sections 552.117 and 552.130 of the Government Code, you have marked information in the submitted documents that the city seeks to withhold under those exceptions. Accordingly, we will address sections 552.117 and 552.130, which are mandatory exceptions that may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

arguments and reviewed the information you submitted. We also have considered the comments that we received from the requestor.<sup>3</sup>

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. Section 550.065 of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transportation Code § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* The submitted information includes a crash report that was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). In this instance, the requestor has provided the city with two of the three items of information specified by section 550.065(c)(4). As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the crash report we have marked must be released to the requestor in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

Medical records are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered

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<sup>3</sup>*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We conclude that Exhibits B and C are medical records that must be withheld under section 159.002(b) of the MPA, unless the city receives the required written consent for release under sections 159.004 and 159.005.<sup>4</sup>

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code. Section 773.091 is applicable to information relating to the provision of emergency medical services (“EMS”) and 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.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(b)-(c). Section 773.091 further provides, however, that

[t]he 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.

*Id.* § 773.091(g). Information made confidential by section 773.091 may be released to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf.” *Id.* § 773.092(e)(4). We have marked EMS information that is confidential under section 773.091(b). Except for the information specified by section 773.091(g), the marked information must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, unless the city receives the required written consent for release under sections 773.092 and 773.093.

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<sup>4</sup>As we are able to make this determination, we need not address your other claims for Exhibits B and C.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential.

We have marked information that must be withheld under section 552.117(a)(1) if the employee concerned requested confidentiality for the marked information prior to the city's receipt of this request for information. Although the city also seeks to withhold marked information contained in the submitted police records under section 552.117, we note that those records are held by the city police department as a law enforcement agency, not as an employer. Therefore, the marked information in the police records may not be withheld under section 552.117(a)(1) and must be released.

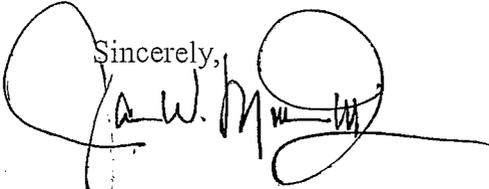
Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(2). The city must withhold the Texas motor vehicle information we have marked under section 552.130.

In summary: (1) the marked crash report must be released in its entirety pursuant to section 550.065(c)(4) of the Transportation Code; (2) Exhibits B and C must be withheld under section 159.002(b) of the MPA, unless the city receives the required written consent for release under sections 159.004 and 159.005; (3) the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except as specified by section 773.091(g), unless the city receives the required written consent for release under sections 773.092 and 773.093; (4) the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the employee concerned timely requested confidentiality for the marked information under section 552.024 of the Government Code; and (5) the marked Texas motor vehicle information must be withheld under section 552.130 of the Government Code. The city must release the rest of the submitted information, to the extent that it has not already done so.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large, stylized flourish extending to the left.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 359742

Enc: Submitted documents

c: Requestor  
(w/o enclosures)