



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 10, 2010

Mr. Jonathan Petix  
1<sup>st</sup> Assistant Criminal District Attorney  
San Jacinto County District Attorney's Office  
1 State Highway 150, Room 21  
Coldspring, Texas 77331

OR2010-03445

Dear Mr. Petix:

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# 372448.

The San Jacinto County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified death that occurred in the San Jacinto County Jail. You claim that the submitted information is excepted from disclosure under section 552.108 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."<sup>1</sup> Gov't Code § 552.101. This section encompasses information protected by other statutes. We have marked an emergency medical service ("EMS") record in the submitted information that is subject to chapter 773 of the Health and Safety Code. 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:

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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). We note that one of the submitted EMS reports concerns an individual who was determined to be deceased at the scene of the incident. The term "patient" is not defined for the purposes of section 773.091 of the Health and Safety Code. When a word used in a statute is not defined and that word is "connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art." Gov't Code § 312.002; *see also Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 485 (Tex. 1998). Taber's Cyclopedic Medical Dictionary defines "patient" as "one who is sick with, or being treated for, an illness or injury; [or] . . . an individual receiving medical care." Taber's Cyclopedic Medical Dictionary 1446 (17th ed. 1989). We also note that other statutes dealing with medically related professions generally define patient as an individual who consults a health care professional. *See* Health & Safety Code § 611.001 (mental health records), Occ. Code §§ 159.001 (physician records), 201.401 (chiropractic records), 202.401 (podiatric records), 258.101 (dental records). Thus, because the generally accepted medical definition of patient indicates that the term refers to a living individual, we find that the term does not encompass the submitted EMS information that concerns the deceased individual. Accordingly, the EMS report pertaining to the individual who was found to be deceased at the scene is not subject to section 773.091 of the Health and Safety Code.

However, we conclude the remaining EMS report, which we have marked, consists of an EMS record of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, except for the information specified in section 773.091(g), the marked EMS record is confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See* Health & Safety Code §§ 773.091-.094. We note that this information 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). When the patient is deceased, the patient's personal representative may consent to the release of the patient's records. *Id.* § 773.093(a); *see also* Open Records Decision No. 632 (1995) (defining "personal representative" for purposes of Health & Safety Code § 773.093). The

consent must be in writing, signed by the patient, authorized representative, or personal representative, and specify (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. Health & Safety Code § 773.093(a). We note that a specific statutory right of access provision prevails over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Thus, if the sheriff receives proper consent, the marked EMS record must be released in its entirety in accordance with chapter 773 of the Health and Safety Code. If the sheriff does not receive proper consent, then with the exception of the information subject to section 773.091(g), which is not confidential, the marked EMS record must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

We will now address your claim under section 552.108 of the Government Code for the remaining information, including the information that is subject to section 773.091(g). Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* 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. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the remaining information pertains to an investigation conducted by the sheriff into the death of an individual at the county jail and that the death was determined to be a suicide. You also represent that the investigation did not result in prosecution, conviction, or deferred adjudication. Based on your representations and our review of the submitted information, we agree that section 552.108(a)(2) is generally applicable to the remaining information.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Basic information refers to the information held to be public in *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). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). You contend the sheriff need not release basic information because the sheriff was not the law enforcement entity that made the underlying arrest of the deceased individual. However, we note that the submitted information does not contain information pertaining to the underlying arrest; instead, the submitted information pertains to the sheriff's investigation of the individual's death in the county jail. Thus, with the exception of basic information about the sheriff's investigation, which must be released, the sheriff may withhold the remaining information, including the information subject to 773.091(g) of the Health and Safety Code, under section 552.108(a)(2) of the Government Code.

In summary, if the sheriff receives proper consent, the marked EMS record must be released in its entirety in accordance with chapter 773 of the Health and Safety Code. If the sheriff does not receive proper consent, then with the exception of the information subject to section 773.091(g), the marked EMS record must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. With the exception of basic information, which must be released, the remaining information, including the information subject to 773.091(g) of the Health and Safety Code, may be withheld under section 552.108(a)(2) of the Government Code.

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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/jb

Ref: ID# 372448

Enc. Submitted documents

c: Requestor  
(w/o enclosures)