



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2010

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
321 John Sartain
Corpus Christi, Texas 78401

OR2010-12025

Dear Ms. Aguilar:

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# 389716.

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified accident. You have redacted Texas driver's license numbers and license plate numbers pursuant to Open Records Decision No. 684 (2009).¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must

¹This office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver's license numbers and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

reasonably explain how and why section 552.108 is applicable to the information at issue. *See Gov't Code § 552.301(e)(1)(A); Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We note that the information you seek to withhold under section 552.108(a)(1) includes a statutory warning. Because a copy of this document has been provided to the arrestee, we find that its release will not interfere with the detection, investigation, or prosecution of crime. *See Gov't Code § 552.108(a)(1)*. Therefore, the department may not withhold the statutory warning under section 552.108(a)(1). You state that the remaining information you have marked relates to an active criminal case that is pending investigation or prosecution. Based upon this representation, we conclude that the release of the remaining information you have marked under section 552.108 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). Thus, with the exception of the statutory warning, the department may withhold the information you have marked pursuant to section 552.108(a)(1) of the Government Code.

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. Section 552.101 encompasses Chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See Open Records Decision No. 649* (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier confidential. *See id.* at 2. You assert that the City of Corpus Christi is part of an emergency communication district established under section 772.318 of the Health and Safety Code. You state that the telephone number you have marked in the submitted information was furnished by a 9-1-1 service supplier. Based on your representations, we conclude that the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 also encompasses section 773.091 of the Health and Safety Code. Section 773.091 provides in relevant 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). Thus, except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. We note, however, 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.” *Id.* §§ 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.* § 773.093. 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. We note a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the department must withhold the marked EMS records under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the department receives the required consent for release of that information. *See id.* §§ 773.092,.093; Open Records Decision No. 632 (1995).

Some of the remaining information is subject to section 552.130 of the Government Code, which 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. Gov’t Code § 552.130(a). Thus, the department must withhold the information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.

In summary, with the exception of the statutory warning, the department may withhold the information you have marked under section 552.108 of the Government Code. The department must withhold (1) the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code; (2) the marked EMS records under section 552.101 in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the department receives the required consent for release of that information; and (3) the information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 389716

Enc. Submitted documents

c: Requestor
(w/o enclosures)