



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2010

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-13547

Dear Ms. Chang:

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# 397515.

The Houston Police Department (the "department") received a request for information in regard to an auto accident on June 23, 2008. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information contains a CR-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c), accident

¹We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces 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. *Id.* § 550.065(c)(4). In this instance, the requestor has provided the department with the requisite pieces of information specified by the statute. Accordingly, the department must release the submitted CR-3 accident report form in its entirety pursuant to chapter 550 of the Transportation Code.²

We now address your argument under section 552.101 of the Government Code for the records made and maintained by emergency medical services personnel (“EMS records”). 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 made confidential by statute. Section 773.091 of the Health and Safety Code provides:

(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.

Health & Safety Code § 773.091(b). 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). Some of the submitted information constitutes EMS records maintained by an EMS provider documenting emergency medical services provided to a patient by EMS personnel. This information, which we have marked, is confidential under section 773.091. 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.* 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. *Id.* § 773.093. 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),

²As a general rule, the exceptions to disclosure found in the Public Information Act do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).

unless the department receives the required consent for release of that information. *See id.* §§ 773.092, .093; Open Records Decision No. 632 (1995).

We now address your argument under section 552.108 of the Government Code for the remaining information, including the information subject to section 773.091(g) of the Health and Safety Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *Id.* You assert the requested information pertains to a case that concluded in a result other than conviction or deferred adjudication because the Harris County District Attorney's Office declined to press charges. Therefore, we agree section 552.108(a)(2) is applicable.

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).³ Thus, with the exception of the basic front page offense and arrest information, the department may withhold the remainder of the requested information from disclosure based on section 552.108(a)(2).

In summary, the department must release the submitted CR-3 accident report form in its entirety under section 550.065(c)(4) of the Transportation Code. The department must withhold the EMS records 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 for information required to be released under section 773.091(g), unless the department receives the required consent for release of that information. The department may withhold the remainder of the requested information from disclosure, with the exception of the basic front page offense and arrest information, based on 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, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877)

³*See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

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 "Sean Nottingham".

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 397515

Enc. Submitted documents

c: Requestor
(w/o enclosures)