



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2010

Mr. Tyler F. Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street Third Floor
Fort Worth, Texas 76102

OR2010-13707

Dear Mr. Wallach:

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# 397941 (PIR No. W002844).

The City of Fort Worth (the "city") received a request for information relating to a traffic accident. You state that some of the requested information has been released. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We first note that the city did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires the governmental body to submit a copy of the request for information to this office not later than the fifteenth business day after the date of its receipt of the request. *See id.* § 552.301(e)(1)(B). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us that the city received the instant request for information on August 4, 2010; therefore, the city's fifteen-business-day deadline under subsection 552.301(e) was August 25. As of the date of this decision, the city had not submitted a copy of the instant request for information to this office.¹ Thus, the city did not comply with section 552.301(e), and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The applicability of section 552.101 of the Government Code can provide a compelling reason for non-disclosure. Accordingly, we will address the city's claim under section 552.101.

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. You claim section 552.101 in conjunction with section 773.091 of the Health and Safety Code. Information relating to the provision of emergency medical services ("EMS") is confidential under section 773.091, which 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). We agree that the submitted EMS information falls within the scope of section 773.091(b). We note that information made confidential by section 773.091 may be released to "any person who bears a written consent of the patient or other persons

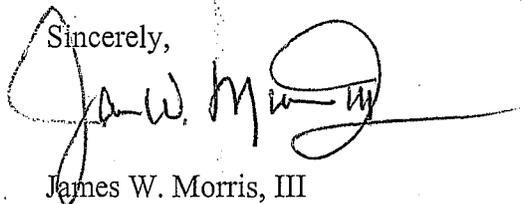
¹Our description of the request is based on other information you provided in requesting this decision.

authorized to act on the patient's behalf." *Id.* § 773.092(e)(4). We therefore conclude that the submitted EMS information must be withheld from the requestor 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 city receives consent for release of the information that complies with sections 773.092 and 773.093 of the Health and Safety 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) 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 "James W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

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

JWM/em

Ref: ID# 397941

Enc: Submitted documents

c: Requestor
(w/o enclosures)