



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2010

Mr. Robert E. Reyna
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2010-16730

Dear Mr. Reyna:

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# 397779 (COSA File No. 2010-6339).

The San Antonio Police Department (the "department") received a request for information related to two specified arrests of a named individual. 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 information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor is a representative of the Texas Department of State Health Services (the "DSHS"). The requestor has informed the department that DSHS seeks the requested information as part of an investigation conducted pursuant to chapter 773 of the Health and Safety Code. Section 773.0612 provides the DSHS or its representative "is entitled to access to records and other documents . . . that are directly related to . . . emergency medical services personnel to the extent necessary to enforce [chapter 773 of the

Health and Safety Code] and the rules adopted under [chapter 773 of the Health and Safety Code].” Health & Safety Code § 773.0612(a). DSHS states the submitted information pertains to an emergency medical technician licensed under chapter 773 of the Health and Safety Code. DSHS states the information is needed to enforce section 157.36(b) of title 25 of the Texas Administrative Code. *See* 25 T.A.C. § 157.36(b). Because the submitted information is directly related to emergency medical services (“EMS”) personnel and the requestor is conducting an investigation under chapter 773, we conclude section 773.0612 of the Health and Safety Code applies to the submitted information. Accordingly, we will consider whether section 773 of the Health and Safety Code permits DSHS to obtain information that is otherwise protected by the exceptions you have raised.

You assert the submitted information is excepted under section 552.101 of the Government Code in conjunction with common-law privacy. However, a specific statutory right of access generally prevails over the common law. *See Cash Am. Int’l Inc. v. Bennett*, 35 S.W.3d 12, 16 (Tex. 2000) (statute abrogates common-law principle only when its express terms or necessary implications clearly indicate Legislature’s intent to do so and requires clear repugnance between common-law and statutory causes of action); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Road*, 436 F.3d 541, 544 (5th Cir. 2006) (common-law controls only where there is no conflicting or controlling statutory law). You also assert the submitted information is excepted under section 552.108 of the Government Code. This office has found that a specific statutory right of access also prevails over general exceptions to disclosure under the Act. *See Open Records Decision No. 613 at 4* (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986). Because the requestor in this instance has a statutory right of access to the information at issue, the department may not withhold this information from the requestor pursuant to section 552.101 of the Government Code in conjunction with common-law privacy or section 552.108 of the Government Code. As you raise no further exceptions to disclosure, the submitted information must be released to this requestor.¹

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

¹We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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 "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 397779

Enc. Submitted documents

c: Requestor
(w/o enclosures)