



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2010

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-17568

Dear Ms. De La Garza:

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# 400761.

The City of Houston, the Houston Emergency Center, and the Houston Police Department (collectively the "city") received five requests from the same requestor for information relating to a fatal traffic accident. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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 other statutes make confidential. The city claims section 552.101 in conjunction with section 773.091 of the Health and Safety Code. Section 773.091 is applicable to records of the provision of emergency medical services ("EMS") and provides in part:

- (a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course or providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(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(a)-(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). The EMS information we have marked is generally confidential under section 773.091. We note that such 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* 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, the city must withhold the marked EMS information 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 the required written consent for release of the EMS information under sections 773.092 and 773.093.

Next, we address your claim under section 552.108 of the Government Code for the remaining information at issue, including any information encompassed by section 773.091(g) of the Health and Safety Code that is not otherwise subject to release under sections 773.092 and 773.093. 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 reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that release of the remaining information would interfere with an open and active criminal investigation. Based on your representations, we conclude that section 552.108(a)(1) is generally applicable to the remaining information. *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).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code.¹

In summary: (1) the marked EMS information must be withheld 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 the required consent for release of the EMS information under sections 773.092 and 773.093 of the Health and Safety Code; and (2) the rest of the submitted information, including any information encompassed by section 773.091(g) of the Health and Safety Code that is not otherwise subject to release under sections 773.092 and 773.093 of the Health and Safety Code, may be withheld under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c).

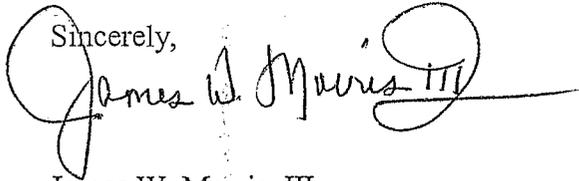
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As we are able to make this determination, we need not address your claim under section 552.103 of the Government Code, except to note that section 552.103 does not generally except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

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 cursive script that reads "James W. Morris, III". The signature is written in black ink and includes a long horizontal flourish at the end.

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

JWM/em

Ref: ID# 400761

Enc: Submitted information

c: Requestor
(w/o enclosures)