



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 1, 2010

Mr. Ronald J. Bounds  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2010-18008

Dear Mr. Bounds:

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# 401547.

The Corpus Christi Fire Department (the "fire department") received an initial request for "a complete copy of any and all records" pertaining to a specified fire. The fire department received subsequent requests for "fire reports and any photos" pertaining to the same fire, "any and all documents associated with [an] accident" that is related to the same fire, and information pertaining to case number 1009160053. You state the fire department has released some of the responsive information with redactions under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the fire department's procedural obligations. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body

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<sup>1</sup>We note Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold 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.

that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), a governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). Upon review of the documents you have submitted in response to the third request we find that they were responsive to the initial request for information, which the fire department received on September 22, 2010. Thus, the fire department was required to raise the exceptions to disclosure that apply to this information by October 6, 2010 and was required to submit this information by October 13, 2010. The fire department timely submitted the information at issue for our review by October 13, 2010. We note, however, while the fire department raised section 552.101 for this information within the ten-business-day time period as required by subsection 552.301(b), the fire department did not raise section 552.103 within the ten-business-day deadline.

A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 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); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630, 325 at 2 (1982). Section 552.103 is a discretionary exception that protects a governmental body's interests and may be waived by a governmental body's failure to comply with the procedural requirements of the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas, no pet.) (governmental body may waive section 552.103). In failing to comply with section 552.301, the fire department has waived its claim under section 552.103. Therefore, the fire department may not withhold any of the submitted information under section 552.103. The Corpus Christi Police Department (the "police department"), however, asserts that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We note that the need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. Open Records Decision No. 586 (1991). Accordingly, we will consider the police department's argument under section 552.108, as well as the fire department's argument under section 552.101.

We now turn to your arguments under section 552.101 of the Government Code, which 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 section 773.091 of the Health and Safety Code, which 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). Except for the information specified in section 773.091(g), emergency medical services ("EMS") records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. You state the submitted fire department incident reports and patient care reports are maintained by the fire department and reflect the treatment of patients by EMS personnel. Based on your representation and our review, we find that the fire department incident reports, which only contain brief references to unidentified, injured persons, do not constitute EMS records of the identity, evaluation, or treatment of a patient for purposes of section 773.091. Therefore, the fire department incident reports may not be withheld under section 552.101 of the Government Code in conjunction with section 773.091. We agree, however, the submitted patient care reports constitute EMS records that are subject to chapter 773 of the Health and Safety Code. As you acknowledge, 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. Section 773.093 provides 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. In this instance, you state the requestors have not "submitted adequate written consent of the patients, or another person authorized to act on the patients' behalf." Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the submitted patient care reports, which we have marked, may only be released if the fire department receives proper written consent in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.093.

With regard to 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, we address the police department's claim under section 552.108 of the Government Code. 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The police department has provided a representation stating that the remaining information relates to an ongoing criminal case. Based on this representation and our review of the remaining information, we conclude that release of this information 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, section 552.108(a)(1) is applicable to the information at issue.

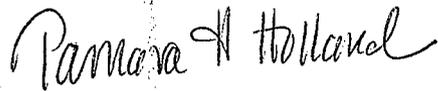
We note section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also Open Records Decision No. 127 at 3-4 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the fire department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, with the exception of the information subject to section 773.091(g) of the Health and Safety Code, the fire department must withhold the submitted patient care reports, which we have marked, under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, unless the fire department receives the required consent for release of that information. With the exception of basic information, the fire department may withhold the remaining 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, pursuant to section 552.108(a)(1) 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](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,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/em

Ref: ID# 401547

Enc. Submitted documents

c: Requestor  
(w/o enclosures)