



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 3, 2011

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

OR2011-05997

Dear Ms. Eales:

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# 416214 (GC No. 18331).

The Houston Police Department (the "department") received a request for all records pertaining to a specified automobile accident. You state the department has released a portion of the requested information to the requestor. You state a portion of the submitted information is not subject to the Act. You claim the remaining submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us a portion of the submitted information consists of a grand jury subpoena and records obtained under that subpoena. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and, therefore, not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and, therefore, are also not subject to the Act. Open Records Decision Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). You state that the department holds a portion of the submitted information as an agent of the grand jury. Upon review, we agree a portion of the submitted information, which we have marked, consists of records of the judiciary, and, therefore, is not subject to disclosure under the Act.¹ We note, however, the fact that information

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. We note it appears the submitted Houston Fire Department records were obtained by the department for its own use in the department's investigation. Thus, we find the Houston Fire Department records obtained by grand jury subpoena are held in the department's own capacity in the course of official department business, and are, therefore, subject to the Act. *See* Gov't Code § 552.002 (providing that information collected, assembled, or maintained in connection with the transaction of official business by a governmental body is "public information"). As such, we will address your arguments against disclosure of the Houston Fire Department records and the remaining submitted information.

Section 552.101 of the Government Code exempts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. The section encompasses information protected by other statutes. You state the remaining information includes emergency medical service ("EMS") records that are confidential under section 773.091 of the Health and Safety Code. Section 773.091 provides, in part, the following:

(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). You indicate a portion of the remaining information constitutes EMS records maintained by an EMS provider documenting emergency medical services provided to a patient by EMS personnel. Upon review, we agree the information you and we have marked constitutes EMS records that are confidential under section 773.091. Therefore, the department must withhold the EMS records you and we have marked 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). *See id.* §§ 773.092, .093; Open Records Decision No. 632 (1995).

Section 552.101 also encompasses section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Upon review, we agree that the information you have marked consists of CHRI for the purposes of chapter 411. Accordingly, the department must withhold this marked information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

In summary, the department must withhold the EMS records you and we have marked 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). The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 411.083 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) 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 416214

Enc. Submitted documents

c: Requestor
(w/o enclosures)