



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2011

Ms. Tracy L. Dutton
City Clerk
City of Bellaire
7008 South Rice Avenue
Bellaire, Texas 77401-4495

OR2011-06237

Dear Ms. Dutton:

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# 416601.

The City of Bellaire (the "city") received a request for information regarding fire and EMS activity and calls from December 2010 to January 2011. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹

Initially, we note the requestor seeks to obtain the requested information on a monthly basis. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

required to comply with a standing request to supply information on a periodic basis, because such information is prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the city need not comply with the request to provide information on an ongoing basis.

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 made confidential by other statutes, such as section 773.091 of the Health and Safety Code. This section 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 of 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.

Health & Safety Code § 773.091(a)-(b). Section 773.091 applies to records of the provision of emergency medical services ("EMS"). *See* Open Records Decision No. 632 (1995). You state the city runs a monthly report of fire and EMS activity. Upon review, we find the submitted report does not contain communications between certified emergency medical services personnel or a physician providing medical supervision and a patient that were made in the course of providing emergency medical services to the patient. *See* Health & Safety Code § 773.091(a). Further, you do not demonstrate the report at issue constitutes EMS records of the identity, evaluation or treatment of patients that were created by EMS personnel or a physician or that are maintained by an EMS provider. *See id.* § 773.091(b); *see also* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). We therefore conclude the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. As you raise no additional exceptions for the requested information, it must be released to the requestor.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID # 416601

Enc. Submitted documents

c: Requestor
(w/o enclosures)