



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 16, 2011

Mr. Don Cheatham
General Counsel
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-06850

Dear Mr. Cheatham:

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# 417572 (GC 18379).

The Houston Police Department (the "department") received a request for six categories of information pertaining to a specified accident. You state you will release some of the requested information. You claim that the 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.

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 section encompasses information made confidential by other statutes, such as section 773.091 of the Health and Safety Code, which is applicable to information relating to the provision of emergency medical services ("EMS") and provides, in pertinent 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.

(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(b). You assert the submitted information is confidential under section 773.091; however, we note the information reveals the individuals concerned were deceased when EMS personnel arrived. The term "patient" is not defined for the purposes of section 773.091 of the Health and Safety Code. When a word used in a statute is not defined and that word is "connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art." Gov't Code § 312.002; *see also Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 485 (Tex. 1998). Taber's Cyclopedic Medical Dictionary defines "patient" as "one who is sick with, or being treated for, an illness or injury; [or] . . . an individual receiving medical care." Taber's Cyclopedic Medical Dictionary 1446 (17th ed. 1989). We also note other statutes dealing with medically related professions generally define patient as an individual who consults a health care professional. *See* Health & Safety Code § 611.001 (mental health records); Occ. Code §§ 159.001 (physician records); 201.401 (chiropractic records); 202.401 (podiatric records); 258.101 (dental records). Thus, because the generally accepted medical definition of patient indicates that the term refers to a living individual, we find the term does not encompass information that concerns the deceased individuals. Accordingly, we conclude section 773.091 of the Health and Safety Code is not applicable to the submitted information and the department may not withhold this information under section 552.101 on that basis.

Section 552.101 also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See 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. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or

any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find portions of the submitted information, which we have marked, consist of CHRI that is confidential under section 411.083. Thus, the department must withhold the marked information under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find you have not demonstrated the remaining information constitutes CHRI for purposes of chapter 411 of the Government Code. Accordingly, the remaining information may not be withheld under section 552.101 on that basis.

We note some of the remaining information is excepted from disclosure pursuant to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. *Id.* § 552.130(a)(1), (2). Section 552.130 protects privacy interests. We note, however, that the right of privacy lapses at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489, 497 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, Texas motor vehicle record information pertaining to a deceased individual may not be withheld under section 552.130. You do not explain whether living individuals have an interest in the Texas motor vehicle information we have marked. Thus, to the extent this information pertains to a living individual, the department must withhold the information we have marked in the submitted documents under section 552.130 of the Government Code.² To the extent this information pertains solely to a deceased individual, this section is inapplicable and the information may not be withheld on that basis.

In summary, the department must withhold the CHRI we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. The department must withhold the Texas motor vehicle information we have marked under section 552.130 of the

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

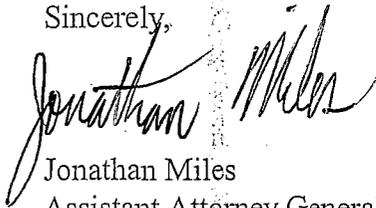
²This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Government Code if any living person has an interest in it. The remaining information must be released.³

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 417572

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b)