



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2011

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2011-18598

Dear Ms. Cohen:

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# 439361 (DPS PIR # 11-2512).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified cause number. You state the department has provided some of the requested information, including basic information, to the requestor. *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 773.091 of the Health and Safety Code, which provides in 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). Thus, except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.093. Upon review, we find section 773.091 is applicable to the information we have marked. We note 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 be written and signed by the patient, authorized representative, or personal representative and 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. *Id.* § 773.093(a). Although you seek to withhold the EMS record we marked under section 552.108 of the Government Code, 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).* Therefore, the department must withhold the EMS record we marked under section 552.101 in conjunction with section 773.091, except as specified by section 773.091(g). We will consider your claim under section 552.108 of the Government Code for the remaining information, including the information subject to section 773.091(g). However, the department must release the EMS record on receipt of proper consent under section 773.093. Health & Safety Code §§ 773.092, .093.

Section 552.108(a)(1) of the Government Code 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information pertains to an ongoing criminal case. Based on this representation and our review, we conclude release of the 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. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, with the exception of basic information, which you

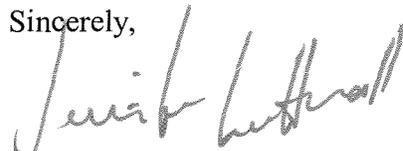
state you have released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, with the exception of the information subject to section 773.091(g), the department must withhold the marked emergency medical services record under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code if the department does not receive consent that complies with section 773.093 of the Health and Safety Code. If the department receives proper consent, the marked EMS record must be released in its entirety in accordance with chapter 773 of the Health and Safety Code. With the exception of basic information, which you state you have released, the department may withhold the remaining information, including the information subject to section 773.091(g), under 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 439361

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.