



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2012

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2012-01492

Dear Ms. Camp-Lee:

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# 443912.

The Round Rock Fire Department and the Round Rock Police Department (collectively, the "department"), which you represent, received three requests for information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under section 552.108 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."¹ Gov't Code § 552.101. Section 552.101 encompasses information made confidential by statute, 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.

...

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).

(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). We note the submitted information includes emergency medical services (“EMS”) records, which we have marked. Except for the information specified in section 773.091(g), EMS records are deemed confidential and may be released only in accordance with chapter 773 of the Health & Safety Code. *See id.* §§ 773.091, .094. The first requestor submitted to the department an Authorization for the Use and Disclosure of Protected Health Information signed by her client. Thus, the first requestor may be the authorized representative for the individual whose EMS records are at issue. 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 records we have 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). Thus, if the department receives proper consent, the submitted EMS records must be released in their entirety in accordance with chapter 773 of the Health and Safety Code. However, if the department does not receive consent that complies with section 773.093 of the Health and Safety Code, then with the exception of the information subject to section 773.091(g), which must be released, the department must withhold the submitted EMS records under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, 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 submitted information relates to pending criminal cases. Thus, based on your representation, we conclude release of the submitted information would interfere with the detection, investigation, or prosecution of crime, and we agree section 552.108(a)(1) is applicable to the submitted information. *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).

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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 177; see also Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, 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.

In summary, with the exception of the information subject to section 773.091(g), the department must withhold the marked EMS records 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 records must be released in their 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.²

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

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²We note the basic information contains the arrestee's 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).

Ref: ID# 443912

Enc. Submitted documents

cc: Requestor
(w/o enclosures)