



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2012

Ms. Judith S. Rawls
Assistant City Attorney
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2012-04880

Dear Ms. Rawls:

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# 449641.

The Beaumont Police Department (the "department") received a request for all information relating to a specified incident. You indicate you have released copies of the CR-3 accident report form to the requestor. *See* Transp. Code § 550.065(c)(4) (officer's accident report must be released to person who provides two of following three pieces of information: date of accident; name of any person involved in accident; specific location of accident). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, does not relate to the specified incident and, therefore, is not responsive to the present request for information. This decision does not address the public availability of the non-responsive information and such information need not be released in response to the present request.

Next, we note some of the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part the following:

Without limiting the amount or kind of information that is public information under [the Act], the following categories of information are public

information and not excepted from required disclosure unless made confidential under [the Act] or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)). The responsive information includes search warrants and a search warrant return, which we have marked, that have been signed by a magistrate and are subject to section 552.022(a)(17). Although you raise section 552.108 of the Government Code for this information, this is a discretionary exception and does not make information confidential under the Act. *See id.* § 3-26, 28-37 (providing for “confidentiality” of information under specified exceptions); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). As such, the search warrants and search warrant return may not be withheld under section 552.108. However, because section 552.101 makes information confidential for purposes of section 552.022(a)(17), we will address the applicability of this section to the court-filed documents as well as the remaining responsive information. We will address your claim under section 552.108 for the remaining responsive information that is not subject to section 552.022.

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. Section 552.101 encompasses information made confidential by statute, section 773.091 of the Health and Safety Code, which 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 (“EMS”) 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 [EMS] personnel or by a physician providing medical supervision that are created by the [EMS] personnel or physician or maintained by an [EMS] 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(a)-(b), (g). 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. We note the responsive information contains records created by EMS personnel. 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). We note although you raise section 552.108 for the EMS records, the general exceptions found in the Act cannot impinge on a statutory right of access to information. *See* Open Records Decision No. 613 at 4 (1993) (exceptions in Act cannot impinge on a statutory right of access to information); *see also* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, 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. If the department does not receive proper consent, then, with the exception of information subject to section 773.091(g) of the Health and Safety Code, the marked EMS records must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. In that case, we consider your claim under section 552.108 of the Government Code for the information subject to section 773.091(g) along with the remaining information.

The remaining responsive information also contains the results of an analysis of blood specimens. Section 724.018 of the Transportation Code provides, “[o]n the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person’s attorney.” Transp. Code § 724.018. In this instance, the requestor is requesting the information as the authorized representative of the estate of the deceased individual whose specimens are at issue. Although you seek to withhold the information at issue under section 552.108 of the Government Code, as noted above, the general exceptions found in the Act cannot impinge on a statutory right of access to information. *See* ORDs 613 at 4, 451 at 4. Therefore, as the requestor is requesting the information as an authorized representative of the estate of the deceased individual whose specimens are at issue, the department must release the results of the analysis of the specimens we have marked to this requestor pursuant to section 724.018 of the Transportation Code.

You claim section 552.108 of the Government Code for the remaining information. Section 552.108(a)(1) 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 remaining responsive information relates to a pending criminal investigation. Based upon your representations and our review, we conclude release of the remaining information will 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is generally applicable to the remaining information.

However, 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 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold the remaining responsive information from disclosure under section 552.108(a)(1) of the Government Code.

In summary, the department need not release the non-responsive information. The department must release the marked court filed documents under section 552.022(a)(17) of the Government 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. If the department does not receive proper consent, then, with the exception of the information subject to section 773.091(g) of the Health and Safety Code, the marked EMS records must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The department must release the blood specimens analysis results we have marked to this requestor pursuant to section 724.018 of the Transportation Code. With the exception of the basic information, the department may withhold the remaining responsive information from disclosure under section 552.108(a)(1) of the Government Code.¹

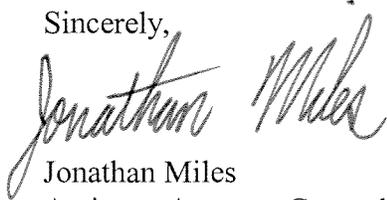
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

¹As the requestor has a special right of access to some of the information being released, the department should request another ruling from this office if it receives another request from a different requestor for the same information.

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,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in black ink and is positioned to the left of the typed name.

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 449641

Enc. Submitted documents

c: Requestor
(w/o enclosures)