



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 11, 2012

Mr. B. Chase Griffith  
Counsel for City of McKinney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2012-05198

Dear Mr. Griffith:

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# 450261 (McKinney ORR # 10-4921, 10-4922, 10-4935, and 10-4994).

The McKinney Police Department (the "department"), which you represent, received four requests from different requestors for information pertaining to case number 12-00423. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses information made confidential by statute, including section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). We note one of the requestors is the attorney representing the estate of the deceased driver. This requestor has provided the department with all three specified items of information. We note the exceptions to disclosure found in the Act are generally not applicable to information another statute makes public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the department must release the

submitted CR-3 crash report to the attorney representing the estate of the deceased driver pursuant to section 550.065(c)(4) of the Transportation Code. However, the remaining three requestors have not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the submitted CR-3 crash report form from the remaining requestors under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code. Section 773.091 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). Except for the information specified in section 773.091(g), emergency medical services (“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. Upon review, we find the information we have marked consists of an EMS record subject to section 773.091(b). 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. Among the individuals authorized to act on the patient’s behalf in providing written consent is a “personal representative,” if the patient is deceased. *Id.* § 773.093(a). Section 773.093 provides a consent for release of EMS records 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. Thus, if the department receives the required consent, the marked EMS record must be released in its entirety pursuant to sections 773.092 and 773.093 of the Health and Safety Code. If the department does not receive the required consent for release, then except for any information subject to section 773.091(g), which is not confidential, the marked EMS record must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

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 relates to a pending criminal investigation. Based upon this representation and our review, we conclude release of the information at issue 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. Civ. 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, we conclude section 552.108(a)(1) of the Government Code is generally applicable to the remaining information, including information subject to section 773.091(g).

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 Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, you may withhold the remaining information from disclosure under section 552.108(a)(1), including the information subject to section 773.091(g) of the Health and Safety Code.

In summary, the department must release the submitted CR-3 crash report to the attorney representing the estate of the deceased driver pursuant to section 550.065(c)(4) of the Transportation Code. The department must withhold the submitted CR-3 crash report from the remaining requestors under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. If the department receives the required consent, then the department must release the marked EMS record in its entirety pursuant to sections 773.092 and 773.093 of the Health and Safety Code. If the department does not receive the required consent, then, except for the information subject to section 773.091(g) of the Health and Safety Code, the department must withhold the marked EMS record under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. With the exception of basic information, the department may withhold the remaining information from disclosure under section 552.108(a)(1) of the Government Code, including the information subject to section 773.091(g) of the Health and Safety Code. The basic information must be released.

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](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/som

Ref: ID# 450261

Enc. Submitted documents

c: Requestors  
(w/o enclosures)