



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 2, 2012

Ms. Cara Leahy White  
Counsel for the City of Southlake  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2012-06351

Dear Ms. White:

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# 452441.

The Southlake Department of Public Safety (the "department"), which you represent, received a request for information pertaining to a specific incident involving a named individual and the requestor's child. You claim the requested 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. 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. Section 552.101 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. 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. We note although you raise section 552.108 for the EMS record, 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 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. We will address your claim under section 552.108 of the Government Code for the information subject to section 773.091(g) and the remaining information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information relates to a concluded case that did not result in a conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is generally applicable to the remaining information, including the information subject to section 773.091(g).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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

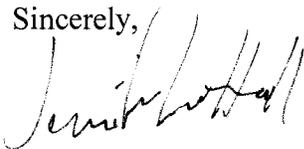
(Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the remaining information pursuant to section 552.108(a)(2) of the Government Code, including the information subject to section 773.091(g) of the Health and Safety Code.

In summary, 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 pursuant to section 552.108(a)(2) 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# 452441

Enc. Submitted documents

c: Requestor  
(w/o enclosures)