



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2012

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2012-09654

Dear Ms. Cost:

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# 457219 (PIR No. 12-1082).

The Texas Department of Public Safety (the "department") received a request for the full investigation report of a specified fatal accident. You state you have made available to the requestor some of the responsive information, including basic information. *See* Gov't Code § 552.108(c) (basic information about an arrested person, an arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim the remaining information is excepted from disclosure under sections 552.101, 552.108, and 552.115 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 public 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 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). We note one of the reports you seek to withhold, which we have marked, concerns an individual who was determined to be deceased at the scene of the incident. The term “patient” is not defined for the purposes of section 773.091 of the Health and Safety Code. When a word used in a statute is not defined and that word is “connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art.” Gov’t Code § 312.002; *see also Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 485 (Tex. 1998). Taber’s Cyclopedic Medical Dictionary defines “patient” as “one who is sick with, or being treated for, an illness or injury; [or] . . . an individual receiving medical care.” Taber’s Cyclopedic Medical Dictionary 1446 (17th ed. 1989). We also note that other statutes dealing with medically related professions generally define patient as an individual who consults a health care professional. *See* Health & Safety Code § 611.001 (mental health records); Occ. Code §§ 159.001 (physician records), 201.401 (chiropractic records), 202.401 (podiatric records), 258.101 (dental records). Thus, because the generally accepted medical definition of patient indicates the term refers to a living individual, we find the term does not encompass the submitted EMS information that concerns the deceased individual. Accordingly, the report pertaining to the individual who was found to be deceased at the scene, which we have marked, is not subject to section 773.091 of the Health and Safety Code and may not be withheld under section 552.101 on that basis.

However, we conclude the remaining reports, which you have marked, consist of EMS records of the identity, evaluation, or treatment of patients by EMS personnel. It does not appear any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code apply in this instance. We therefore conclude the remaining information you have marked must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the department receives consent for release of the information that complies with sections 773.092 and 773.093 of the Health and Safety Code.

You claim some of the remaining information is excepted under section 552.108(a)(1) of the Government Code, which 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). Generally, a governmental body claiming section 552.108(a)(1) 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 inform us the information you have marked relates to a pending criminal investigation. Based upon your representation and our review, we conclude the 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). Thus, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code.

Section 552.115(a) of the Government Code provides “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021[.]” Gov’t Code § 552.115. Section 552.115 only applies to information maintained by the bureau of vital statistics or local registration official. We note the department is not the Bureau of Vital Statistics or a local registration official. Therefore, the department may not withhold the submitted death certificate under section 552.115 of the Government Code. *See* Open Records Decision No. 338 (1982).

We note some of the remaining information is subject to section 552.117(a)(4) of the Government Code, which excepts from disclosure the present and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of a peace officer who was killed in the line of duty, regardless of whether the deceased complied with section 552.024 or section 552.1175.¹ Gov’t Code § 552.117(a)(4). Accordingly, the department must withhold the information we have marked under section 552.117(a)(4) of the Government Code.

In summary, except for the reports we have marked for release, the department must withhold the EMS records you have marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g) of the Health and Safety Code. The department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.117(a)(4) of the Government Code and must release the remaining information.

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.

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).

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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 457219

Enc. Submitted documents

c: Requestor
(w/o enclosures)