



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2012

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2012-11640

Dear Mr. Weir:

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# 460266 (COSA File Nos. W007391 and W007788).

The City of San Antonio (the "city"), received two requests from the same requestor for the reports and 9-1-1 audio recordings pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), within fifteen business days of receipt of the request for information, the governmental body must submit to this office, among other items, written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, you state the city received the first request for information, which seeks the 9-1-1 audio recordings, on May 4, 2012. Accordingly, the 15-business-day deadline for this request was May 25, 2012. The city submitted the required information, however, in an envelope postmarked June 13, 2012. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period).

Consequently, with respect to the submitted audio CD responsive to the first request, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists when another source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). In this instance, you raise section 552.101 of the Government Code, which can provide a compelling reason to withhold information. Accordingly, we will address your argument under section 552.101 for the submitted audio CD, along with the timely 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. This exception encompasses information made confidential by other statutes, such as section 773.091 of the Health and Safety Code, which provides in relevant 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 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 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(a)-(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. You assert the submitted information consists of records created and maintained by the city’s fire department that reflect the treatment of a patient by EMS personnel. We agree the submitted documents constitute EMS records that are subject to chapter 773 of the Health and Safety Code. We note, however, 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. *Id.* § 773.0923(a). You do not inform us the requestor has provided the department with any information indicating that an exception under section 773.092 would apply. *See id.* § 773.092. Accordingly, unless the city receives proper written consent, the city must withhold the submitted documents under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except for the information subject to section 773.091(g), which must be released. However, we find the submitted audio recording pertains only to the dispatch of EMS personnel to a location. This dispatch recording does not contain any information regarding actions performed or services provided by EMS personnel upon arriving at that location, and you do not explain how these recordings reveal the identity, evaluation, or treatment of a patient by EMS personnel. Although you state the recording reveals communications between EMS personnel and the patient’s wife, we note the caller is not the patient’s wife, and the other person on the scene is identified as a nurse, not EMS personnel. Thus, we conclude you failed to demonstrate the applicability of section 773.091 of the Health and Safety Code to the submitted recording, and it may not be withheld under section 552.101 of the Government Code. As you raise no other exception to disclosure, the submitted audio recording must be released.

In summary, with the exception of information subject to section 773.091(g), the city must withhold the submitted documents under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. Information subject to section 773.091(g) and the submitted audio recording 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,

A handwritten signature in cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

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MHB/som

Ref: ID# 460266

Enc. Submitted documents

c: Requestor  
(w/o enclosures)