



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2012

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2012-20176

Dear Ms. Shortall:

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# 473692.

The Arlington City Attorney's Office (the "city attorney's office") received a request for six categories of information pertaining to a specified date and a specified location. You indicate you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city attorney's office's procedural obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information at issue; (2) a copy of the request for information; (3) a signed statement of the date of the governmental body's receipt of the request or evidence sufficient to establish the date; and (4) the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e). In this instance, you state the city attorney's office received the request for information on September 20, 2012. Accordingly, the

ten-business-day deadline was October 4, 2012 and the fifteen-business-day deadline was October 11, 2012. The envelope in which the city attorney's office provided the information required by section 552.301(b) is postmarked October 5, 2012, and the envelope in which the city attorney's office provided the information required by section 552.301(e) is postmarked October 12, 2012. *See id.* § 552.308(a) (deadline under Act is met if document bears post office mark indicating time within deadline period). Consequently, we find the city attorney's office 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 where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address its applicability to 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. This section encompasses section 773.091 of the Health and Safety Code, which provides in relevant part as follows:

(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). Thus, except for the information specified in section 773.091(g), emergency medical services ("EMS") records are deemed confidential under section 773.091. *See id.* The submitted information consists of EMS records that are

subject to chapter 773 of the Health and Safety Code. Therefore, the city attorney's office must withhold the submitted EMS records 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).

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, 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 black ink, appearing to read 'Nneka Kanu', with a stylized flourish extending to the right.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 473692

Enc. Submitted documents

c: Requestor
(w/o enclosures)