



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 9, 1997

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR97-1326

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106751.

The Houston Fire Department (the "department") received several open records requests for the following categories of information pertaining to certain specified calls for service from the department:

all records, call logs, audio tapes of call being received from dispatcher, audio tapes of calls being dispatched, audio recording of radio calls between service vehicles and dispatchers and supervisors and any other units assisting with this request for service. Also records showing time that call was received and time of arrival.

You have submitted to this office as responsive to the requests several documents entitled "EMS Unit Response Profile," several documents entitled "EMS Basic Response & Patient Evaluation Record," as well as various other department records pertaining to the dispatch of vehicles to the location calling for service. You have also submitted tape recordings of the citizens' telephone calls requesting assistance and of the communications between dispatchers and the service units pertaining to several of the referenced calls for service. You contend the records at issue are excepted from required public disclosure pursuant to sections 552.101 and 552.103 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) You contend the requested information is confidential under section 773.091 of the Health and Safety Code. Section 773.091(b) of the Health and Safety Code provides:

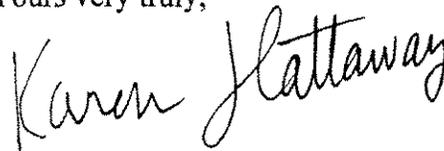
Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision *that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider* are confidential and privileged and may not be disclosed except as provided by this chapter. [Emphasis added.]

We agree that the “EMS Unit Response Profile” and the “EMS Basic Response & Patient Evaluation Record” constitute records made confidential under section 773.091(b). Consequently, the department must withhold these records pursuant to section 552.101 of the Government Code.

We next discuss the applicability of section 552.103 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that the requested information relates to both pending and reasonably anticipated litigation to which the City of Houston is or will become a party. We therefore conclude that the remaining requested records may be withheld pursuant to section 552.103.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

¹In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

KEH/RWP/cbh

Ref.: ID# 106751

Enclosures: Submitted documents

cc: Ms. Jocelyn Lane
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