



November 3, 1999

Mr. Duncan R. Fox
Assistant Chief, Legal Services
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0001

OR99-3111

Dear Mr. Fox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129698.

The Texas Department of Public Safety (“DPS”) received two requests for the same information regarding a motor vehicle accident which occurred on August 2, 1999, at the intersection of U.S. 90A West and Harlem Rd, 3.0 miles east of Richmond, Texas, Fort Bend County. You claim that the requested information, with the exception of the accident report, is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the samples of the requested information you have submitted.¹

First, we note that the submitted information includes medical records. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Access to medical records is governed by the

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Medical Practices Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Subsections 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which the city police department obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the records that are confidential and may be released only as provided by the MPA.

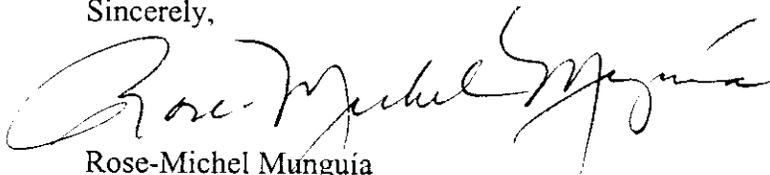
Next, we consider your section 552.108 claim as to the remaining information. Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that the investigation is ongoing, the crime has not yet been prosecuted, and the requested information pertains to the pending case. We, therefore, believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.*; see *Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime and it is held to be public. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ'g 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 also* Open Records Decision No. 127(1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

As sections 552.101 and 552.108 are dispositive, we will not address your section 552.103 claim.² We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Rose-Michel Munguia
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 129698

Encl. Submitted documents

cc: Mr. J. S. Hinton
J. S. Hinton & Associates., Incorporated
Accident Reconstruction
P. O. Box 10685
Houston, Texas 77206
(w/o enclosures)

² Basic, front page offense report type information may not be withheld from disclosure under either section 552.108 or section 552.103. Open Records Decision No. 597 at 3 (1991).