



December 1, 2000

Ms. Jeanine A. Cadena
Bickerstaff, Heath, Smiley, Pollan, Keever, and McDaniel, L.L.P.
3000 Bank One Center
1717 Main Street
Dallas, Texas 75201-4335

OR2000-4558

Dear Ms. Cadena:

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# 142350.

The Town of Flower Mound (the "Town"), which you represent, received a request for information about a police report. You claim that the requested information is excepted from disclosure under section 552.108 of the Act. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 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 requested information pertains to an active prosecution in the Denton County District Attorney's Office. We therefore believe that release of the information would interfere with the detection, investigation, or prosecution of crime.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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* Open Records Decision No. 127 (1976). You must release the

type of information deemed public by *Houston Chronicle* regardless of its location within an offense report. Thus, with the exception of the basic offense and arrest information and the information discussed below, you may withhold the requested information from disclosure based on section 552.108(a)(1).

It appears that one of the records the Town submitted as responsive to the request was prepared by emergency medical service personnel or physician. Section 552.101 of the Act provides that “[i]nformation is excepted from [public disclosure] if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 773.091 of the Health and Safety Code 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 service provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(b). Section 552.101 of the Act encompasses confidentiality statutes. Therefore, you must withhold most of the information contained in the EMS record. However, subsection (g) of section 773.091 of the Health and Safety Code specifically provides that information as to “the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services” is not protected by the confidentiality provisions of section 773.091. Thus, the information listed in subsection (g) must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

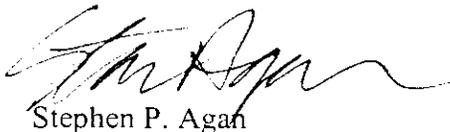
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 142350

Encl. Submitted documents

cc: Ms. Paula Lawrence
Town Secretary
Town of Flower Mound
2121 Cross Timbers Road
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(w/o enclosures)

Mr. Louis W. Mullenix
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Dallas, Texas 75230
(w/o enclosures)