



March 12, 2002

Mr. John Steiner
Division Chief
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2002-1190

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160151.

The City of Austin (the "city") received a request for a copy of the 9-1-1 call made on August 26, 2001 by a named individual. You claim that the requested 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.¹

Initially, we note that a portion of the information at issue here, specifically, the second call on the submitted CD-ROM, consists of EMS records. Section 552.101 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 the EMS records at issue is governed by the provisions of section 773.091 of the Health and Safety Code. Open Records Decision No. 598 (1991). Section 773.091 of the Health and Safety Code, the Emergency Medical Services Act, provides:

¹We note that, although the request is for "the 911 call [the named individual] made," the recording you have submitted as responsive contains a 911 call regarding the named individual, but made by a neighbor, as well as a call made to the named individual by EMS personnel. However, since you deem the recording responsive, we will consider your arguments. Open Records Decision No. 561 (1990) (governmental body must make good faith effort to relate request to information it holds).

(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. . . .

You inform us that the communications medic who placed the call to the named individual is a certified emergency medical technician. Based upon our review of the records at issue, we find that the communication was made in the course of providing emergency medical services. Section 773.091(b) thus protects from disclosure the EMS records at issue. *See* Open Records Decision No. 598 (1991). However, information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient is not confidential. Health & Safety Code § 773.091(g). It does not appear that any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code apply in this instance. Accordingly, the city must withhold the submitted EMS records under section 552.101 of the Government Code, except for information required to be released under section 773.091(g).

The first call on the submitted CD-ROM is a 9-1-1 call from a neighbor of the individual named in the request. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. Therefore, assuming that the city is part of an emergency communications district established under section 772.118 of the Health and Safety Code, the address and telephone number of the 9-1-1 caller are confidential under section 772.118 and must be withheld from disclosure under section 552.101 of the Government Code.

You argue that the remainder of the submitted information is excepted from disclosure under section 552.101 in conjunction with common-law and constitutional privacy.² However, we note that the privacy rights of an individual lapse upon death. Thus, we conclude that the city may not withhold any of the submitted information from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law or constitutional right to privacy. *See generally* Attorney General Opinion H-917 at 3-4 (1976); *see also* Open Records Decision No. 272 at 1 (1981).

Accordingly, the city must withhold the records related to the second submitted call under section 773.091(b) of the Health and Safety Code in conjunction with section 552.101 of the Government Code, except for information required to be released under section 773.091(g). Assuming that the city is part of an emergency communications district established under section 772.118 of the Health and Safety Code, the address and telephone number of the 9-1-1 caller are confidential under section 772.118 and must be withheld from disclosure under section 552.101 of the Government Code. The remainder of the submitted information must be released to the requestor.

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

²Section 552.101 also encompasses the doctrines of common-law and constitutional privacy.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 160151

Enc. Submitted documents

c: Ms. Amanda Lawson
KVUE News
3201 Steck Avenue
Austin, Texas 78757
(w/o enclosures)