



March 14, 2002

Mr. Eddie L. Martin
Assistant City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR2002-1245

Dear Mr. Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159109.

The City of Denton (the "city") received a request for several categories of information. Of the information requested, you only seek a decision for the CQI evaluation/chart on incident number 1080272. You assert that this document is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 773.091(b) and 773.095(a) of the Health and Safety Code. We have considered the exceptions claimed, the information submitted, and the comments provided by the requestor. *See Gov't Code § 552.304* (permitting interested party to submit reasons why requested information should or should not be released).

Initially, we address the apparent disagreement existing between the city and the requestor concerning the documents that have been provided to the requestor. You represent in your letter of December 21, 2001 to this office that all documents subject to the request for information, other than the one for which you seek the instant ruling, will be released to the requestor. On the other hand, the requestor claims in his correspondence of December 26, 2001 to this office that he has not received some of the documents specifically mentioned in his request. We note that this dispute presents a factual dispute that we cannot resolve in the open records process. Therefore, we must rely on the representations of the governmental body requesting our opinion. Open Records Decision Nos. 554 (1990), 552 (1990). However, we further note that if the city maintains any other responsive information that was not submitted to this office, that information must be released at this time. *See Gov't Code §§ 552.301, .302.*

We now address your claims under section 552.101. 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, such as sections 773.091 and 773.095. Section 773.095 of the Health and Safety Code provides as follows:

- (a) The proceedings and records of organized committees of hospitals, medical societies, emergency medical services providers, emergency medical services trauma systems, or first responder organizations relating to the review, evaluation, or improvement of an emergency medical services provider, a first responder organization, or emergency medical services personnel are confidential and not subject to disclosure by court subpoena or otherwise.
- (b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.
- (c) This section does not apply to records made or maintained in the regular course of business by an emergency medical services provider, a first responder organization, or emergency medical services personnel.

In your first brief to us dated December 19, 2001, you state that the type of document at issue here "is a quality review evaluation of each EMS event required by the Physician" and that it "is created by the Fire Department's EMS employee for the EMS supervision committee review." You also state that documents like the one submitted to us are "required by the EMS medical director for purposes of evaluation under the Quality Assurance policies of the Hospital" and that it is your "understanding that the by-laws and protocols of the Emergency Medical system requires review by the hospital committee for review."

Pursuant to section 552.303(c) of the Government Code, this office sent a notice to you dated March 4, 2001, indicating that additional information was required. Specifically, we asked you to provide additional briefing on the following two issues: "(1) Who directed that the "Confidential QI Information" forms be filled out for each EMS event, and (2) after one of these forms is filled out for an EMS event, who specifically reviews the form?" You responded to our request on March 11, 2002 and inform us that the "Battalion [sic] Chief/EMS Program Manager of the Denton Fire Department in consultation with the EMS Director" ordered that the forms be filled out. You also note that the forms are not completed for each EMS event. As for who reviews the completed forms, you advise us that the following process is used: (1) the field training officer fills out the form initially, (2) the paramedic reviews the form, (3) the forms are sent to the CQI officer, who in this instance is also the battalion chief/EMS program manager, (4) the CQI officer makes a report, and (5) copies of the report are sent to the medical director for any runs that deviate from the medical

protocols. Finally, you advise us that this process was developed with instructions from the medical director.

After considering your representations in the March 11, 2002 letter and reviewing the submitted document, we conclude that the submitted document is not the record of an organized committee for purposes of section 773.095. Therefore, the city may not withhold the submitted information under section 552.101 in conjunction with section 773.095 of Health and Safety Code.

We will now address your arguments under section 773.091. Section 773.091 of the Health and Safety Code provides in pertinent 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 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.

After reviewing the submitted document, we find that it is not a record of the identity, evaluation, or treatment of a patient. Instead, it is a quality assurance assessment of the services provided by EMS personnel, and it does not identify a patient or disclose any particular evaluation or treatment performed. As such, the document does not fall within the ambit of section 773.091 and may not be withheld under section 552.101 in conjunction with that provision. The city must, therefore, release the requested information 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).

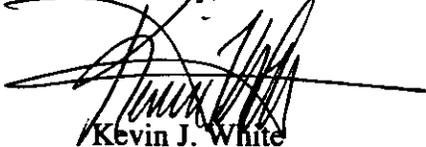
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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,



Kevin J. White
Assistant Attorney General
Open Records Division

KJW/seg

Ref: ID# 159109

Enc. Submitted documents

c: Mr. Stanley Hempstead
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Denton, Texas 76209
(w/o enclosures)