



May 17, 2002

Ms. Cathy Cunningham  
Senior Assistant City Attorney  
City of Irving  
825 West Irving Boulevard  
Irving, Texas 75060

OR2002-2644

Dear Ms. Cunningham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 163055.

The Irving Fire Department (the "department") received a request for "the identity and any and all information available regarding the victim of the accident that occurred on February 28, 2002 that your department responded to at 1408 on that same day." You have submitted an EMS report which was prepared by the Irving Fire Department. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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 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.

Thus, the EMS report, except for the information specified in subsection (g), is deemed confidential by section 773.091 and, therefore, may be released only in accordance with chapter 773 of the Health and Safety Code. *See* Health & Safety Code §§ 773.091-.094.

We note that the requestor in this instance is another governmental body. Section 772.092(e)(2) of the Health and Safety Code allows disclosure of confidential information to governmental agencies if the disclosure is required or authorized by law. You indicate that the requestor has not provided the department with the law that would allow release to the Occupational Health and Safety Administration (“OSHA”). If OSHA provides the department with the applicable law that allows for release, we conclude that the department must make the report available to OSHA. *See generally* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act.)

If, however, OSHA does not provide the department with the applicable law that allows for release, the department must withhold the information from disclosure in its entirety pursuant to section 552.101 in conjunction with section 773.091 of the Health and Safety Code. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute’s enumerated entities), JM-590 at 4-5 (1986); *see also* Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

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,



Joyce K. Lowe  
Assistant Attorney General  
Open Records Division

JKL/sdk

Ref: ID# 163055

Enc: Submitted documents

c: Mr. Fred King  
Occupational Health and Safety  
Dallas Area Office  
U.S. Department of Labor  
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(w/o enclosures)