



October 21, 2002

Ms. Rebecca Brewer
Abernathy Roeder Boyd & Joplin
P.O. Box 1210
McKinney, Texas 75070-1210

OR2002-5939

Dear Ms. Brewer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170982.

The City of Frisco (the "city") received a request for information related to a specified region of the Dallas Parkway. Specifically, the requestor seeks the following four classes of information: documents related to construction or drainage work along this roadway; information pertaining to automobile accidents including police dispatch logs, ambulance run sheets, notice letters from claimants, and injury claims; information pertaining to personal injuries sustained by claimants; and records related to inspections issued by the city for construction or drainage work performed in regard to commercial buildings along this roadway. You state that the city "has produced and/or is currently compiling all existing" documents responsive to the request. You submitted to this office for our review a representative sample of only the requested ambulance run sheets. We therefore assume that you have released the remainder of the information to the extent that it exists. If you have not released it, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also id.* § 552.221 (requiring governmental body to promptly produce public information). You claim that the submitted ambulance run sheets are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹ We have also considered the comments submitted to

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.

this office by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

We first address the timeliness of the city's submissions under section 552.301 of the Government Code. You state that the city received the request on May 15, 2002. The postmark on your request to this office is August 13, 2002, more than 10-business days from May 15, 2002. *See* Gov't Code § 552.308. However, you inform us that during the interval the city sought clarification of the request from the requestor.

In Open Records Decision No. 663 (1999), this office determined that during the interval in which a governmental body and a requestor communicate in good faith to narrow or clarify a request, the Public Information Act (the "Act") permits a tolling of the statutory ten-day deadline imposed by section 552.301. However, a governmental body's request for clarification or narrowing does not give that governmental body an additional ten full days from the date the requestor responds to the clarification request. Rather, "the ten-day deadline is tolled during the process but resumes, upon receipt of the clarification or narrowing response, on the day that the clarification is received." ORD 663 at 5.

In this case, the city states that it received the request for information on May 15, 2002, and sought clarification of this request on May 21, 2002. The city received this clarification on July 19, 2002, and sought clarification again on July 25, 2002. The city received the second clarification on August 2, 2002, and sought a ruling from this office on August 13, 2002. Thus, while the time was tolled while the city was waiting for a response to its request for clarification, during the time not tolled, more than ten business days elapsed between the city's receipt of the request for information and the city's request for a decision from this office. Accordingly, the city has failed to comply with section 552.301 of the Government Code.

When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling interest to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). As the presumption of openness can be overcome by a showing that information is confidential by law, we will consider your arguments 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. Access to EMS records 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 provides in pertinent part as follows:

(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. . . .

The submitted EMS records consist of records of the identity, evaluation, or treatment of a patient by emergency medical services personnel. Section 773.091(b) thus protects from disclosure the submitted EMS records. *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).

Section 773.092 of the Health and Safety Code provides for the release of confidential EMS records in certain circumstances. Therefore, if section 773.092 applies, the city must release the EMS records to the requestor. *See* Health & Safety Code §§ 773.092, .093; Open Records Decision No. 632 (1995). Otherwise, the city must withhold the records under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except for information required to be released under section 773.091(g).

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,


V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 170982

Enc: Submitted documents

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(w/o enclosures)