



November 14, 2002

Mr. Stephen R. Alcorn  
Assistant City Attorney  
City of Grand Prairie  
P.O. Box 53404  
Grand Prairie, Texas 75053-4045

OR2002-6499

Dear Mr. Alcorn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172190.

The City of Grand Prairie (the "city") received a request for the resignation letter of a former city fire department employee, documents relating to a complaint against the former employee regarding his treatment of a patient, and documents outlining the findings of the investigation into the complaint. You advise that you have released some of the requested information. You claim that some of the remaining requested information is not subject to release under chapter 552, and that some is excepted from disclosure under section 552.101 of the Government Code in conjunction with provisions of the Health and Safety Code. We have considered the exceptions you claim and have reviewed the submitted information.

As an initial matter, we address your contention that the city is not required to disclose the contents of the requested investigation. The Public Information Act (the "Act") does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). However, section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if it is maintained for a governmental body, the governmental body owns or has a right of access to the information, and the information pertains to the transaction of official business. *See* Open Records Decision No. 462 (1987); Open Records Decision No. 499 (1988) (relevant facts in determining whether information held by consultant is subject to the Act are: 1) information collected by consultant must relate to governmental body's official business; 2) consultant must have acted as agent of

governmental body in collecting information; and 3) governmental body must have or be entitled to access to information).

You inform this office that the city contracts with Methodist Hospitals of Dallas ("Methodist") for ambulance support services and that Methodist provides medical control and direction through its EMS Biocare Medical Control division. You indicate that the contract provides that the Medical Director of Methodist's Medical Control division may review specific incidents and determine the need for training. You further state that the relevant investigation was not conducted by city personnel, was not a disciplinary action against the named employee, and that no city employee has ever had custody, control, or access to the information at issue. Based on your representations, we conclude that the investigative review performed by Methodist personnel does not constitute public information under section 552.002. Accordingly, this information is not subject to disclosure under the Act. *See* Gov't Code §§ 552.002,.021.

We now address your claims under section 552.101 for the remaining information. 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.

Based on your representations and our review of the submitted information, we find that the letter from the Medical Director of Methodist's EMS Biocare Medical Control division to the city in relation to the investigation conducted by Methodist's Medical Control division constitutes a record of a hospital committee relating to the evaluation of emergency medical services personnel. Thus, this document is confidential pursuant to section 773.095 and must be withheld under section 552.101 of the Government Code.

You also claim that most of the remaining information is confidential under section 773.091 of the Health and Safety Code. Section 773.091 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 documents at issue, we find that they are not records of the identity, evaluation, or treatment of a patient created by the emergency medical services personnel or physician or maintained by an emergency medical services provider. As such, these documents do not fall within the ambit of section 773.091 and may not be withheld under section 552.101 of the Government Code in conjunction with that provision. The city must, therefore, release all of the remaining information to the requestor.

In summary, the requested investigation performed by Methodist is not public information and need not be disclosed. You must withhold the letter from Methodist's Medical Control division under section 552.101 in conjunction with section 773.095 of the Health and Safety Code. The remaining information 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 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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 172190

Enc. Submitted documents

c: Mr. Jason Trahan  
Arlington Morning News  
P.O. Box 655237  
Dallas, Texas 75265  
(w/o enclosures)