ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2003-5563

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185679.

The City of Austin (the "city") received a request for ten categories of information relating to the provision of emergency medical services and the death of the requestor's son. It appears from the submitted records that the city does not maintain information responsive to some of the categories of the request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that does not exist at time request is received). You inform us that other information has been released to the requestor but claim that the submitted records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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 made confidential by other statutes. Section 773.095 of the Health and Safety Code pertains to records of certain medical committees and provides:

> (a) The proceedings and records of organized committees of hospitals, medical societies, emergency medical services providers, emergency medical services and trauma care systems, or first responder organizations relating to the review, evaluation, or improvement of an emergency medical services

> provider, a first responder organization, an emergency medical services and trauma care system, 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.

You inform us that the submitted records were "created and used by the quality assurance committee of the Austin-Travis County EMS Department, an emergency medical services provider." You further inform us that this committee "is an organized committee that works to review, evaluate, and improve the operation of the EMS Department." We note that the records at issue do not appear to be the type "made or maintained in the regular course of business." Thus, based on your representations and our review of the submitted information, we agree that these records are confidential pursuant to section 773.095 of the Health and Safety Code and must therefore be withheld in accordance with section 552.101 of the Government Code.

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

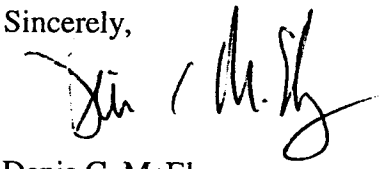
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Dep't of Pub. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/sdk

Ref: ID# 185679

Enc. Submitted documents

c: Ms. Judy Ryser
2716 Barton Creek Boulevard, #1022
Austin, Texas 78735
(w/o enclosures)