



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2004

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2004-1485

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196908.

The Victoria Police Department (the "department") received a request for any records "pertaining to the immigrant truck deaths of last May." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that the department previously received two requests for the same information. In response, this office issued Open Records Letter No. 2003-4210 (2003), in which we ruled that the department may withhold the requested 911 tape and transcript from disclosure under section 552.108 of the Government Code. You represent that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met.¹ Therefore, we conclude that you may continue to rely on Open Records Letter No. 2003-4210 as a previous determination.

¹The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Public Information Act ("Act"); and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

Next, we note that the remaining submitted information consists of Emergency Medical Services ("EMS") records. Access to EMS records is governed by the provisions of the Emergency Medical Services Act, Health and Safety Code sections 773.091-.173. *See* Open Records Decision No. 598 (1991). Section 773.091 of the Emergency Medical Services Act 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

Confidential EMS records may be released to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf." Health & Safety Code § 773.092(e)(4). When a patient is deceased, his personal representative may consent to the release of his records. Health & Safety Code § 773.093(a); *see also* Open Records Decision No. 632 (1995) (defining "personal representative" for purposes of EMS Act). This consent must be written and signed by the patient, authorized representative, or personal representative and must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Health & Safety Code § 773.093(a). Section 773.093(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Therefore, if section 773.092 applies, the department must release the EMS records to the requestor. *See* Health & Safety Code §§ 773.092, .093; Open Records Decision No. 632 (1995). Otherwise, the department must withhold the EMS records under section 552.101 of the Government Code to the extent that they are made confidential by section 773.091(b) of the Health and Safety Code. *See* Health & Safety Code § 773.091(g) (stating confidentiality of EMS records "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").

We now turn to your argument under section 552.108 of the Government Code for the information not made confidential under section 773.091(g). Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or

prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation and prosecution. Based upon this representation, we conclude that the release of the remaining submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the remaining submitted information from disclosure based on section 552.108 of the Government Code. We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, we conclude that: 1) the department may continue to rely on Open Records Letter No. 2003-4210 as a previous determination; 2) the EMS records may only be released in accordance with section 773.092 of the Health and Safety Code; and 3) the department may withhold the information not made confidential under section 773.091(g) of the Health and Safety Code under section 552.108 of the Government Code.²

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

²As our ruling on these issues is dispositive, we need not address your remaining arguments. *See* Open Records Decision No. 681 (2004) (Health Insurance Portability and Accountability Act, 42 U.S.C. §§ 1320d-1320d-8, does not make information confidential for purpose of section 552.101 of the Government Code).

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 196908

Enc: Submitted documents

c: Ms. Dolissa Medina
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(w/o enclosures)