



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2004

Mr. Monty Waters
Assistant General Counsel
Texas Department of Health
100 West 49th Street
Austin, Texas 78756-3199

OR2004-4861

Dear Mr. Waters:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202618.

The Texas Department of Health (the "TDH") received a request for certain data elements from the TDH EMS/Trauma Registry regarding the hospital and EMS record entry forms of thirteen listed counties. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the TDH's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not

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.

been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You acknowledge, and we agree, that you did not submit your request for a decision from our office within the deadlines of section 552.301. Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Section 552.101 can provide such a compelling reason; therefore, we will consider whether section 552.101 requires you to withhold the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the Texas Injury Prevention and Control Act (the "IPCA"), Health & Safety Code chapter 92. The IPCA is implemented by sections 103.10 through 103.24 of title 25 of the Texas Administrative Code.

The IPCA requires certain physicians, medical examiners, justices of the peace, hospitals, and pre-hospital providers to report cases or suspected cases of reportable injuries. *See* Health & Safety Code § 92.003(a); 25 T.A.C. § 103.11(10) (pre-hospital provider is a licensed EMS provider), § 103.13. The Texas Board of Health (the "board") is authorized by the IPCA to adopt rules concerning the reporting of injuries. Health & Safety Code § 92.002. The board is required to establish and maintain a trauma reporting and analysis system regarding information subject to the IPCA. *Id.* §§ 773.112(c), 773.113(a)(3); *see id.* § 92.002(d); 25 T.A.C. § 103.10(a). This system is currently the Texas Trauma Registry (the "registry"), which is "[a] statewide database administered by the Injury and Epidemiology and Surveillance Program which documents and integrates medical and system information related to the provision of trauma care by health care entities." 25 T.A.C. § 103.11(19).

Section 92.002 of the Health and Safety Code provides that "[s]pinal cord injuries, traumatic brain injuries, and submersion injuries are reportable to the [TDH]." Gov't Code § 92.002(a). In addition, the board may adopt rules that require other injuries to be reported under the IPCA. *See id.* § 92.002(b). A "reportable injury" is an injury or condition that is

required to be reported under the IPCA. Health & Safety Code § 92.001(2); 25 T.A.C. § 103.11(14). The following are reportable injuries or conditions: (1) spinal cord injuries, (2) traumatic brain injuries, (3) submersion injuries, (4) information on trauma patients, and (5) “all pre-hospital provider calls where the pre-hospital provider is dispatched, responds, provides care, and/or transports a patient.” Health & Safety Code § 92.002(a); 25 T.A.C. § 103.12.

Section 92.006 of the Health and Safety Code makes confidential information reported to the registry. Section 92.006 provides in relevant part as follows:

(a) All information and records relating to injuries are confidential, including information from injury investigations. That information may not be released or made public on subpoena or otherwise, except that release may be made:

- (1) for statistical purposes, but only if a person is not identified;
- (2) with the consent of each person identified in the information released; or
- (3) to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named person.

Health & Safety Code § 92.006(a); *see also* 25 T.A.C. § 103.22.

The requestor seeks access to certain categories of information in the registry. The TDH asserts that all of the submitted information “pertains to reportable injuries” as that term is defined by the IPCA. On the basis of this assertion and our review of the submitted information, we conclude that the submitted information is confidential under the IPCA, and may only be released in accordance with this statute.

The requestor asserts in his correspondence with the TDH that the release of the submitted information would be for statistical purposes under section 92.006(a)(1). Whether a release of information subject to the IPCA is for statistical purposes is a question of fact. This office cannot resolve questions of fact in the open records process, but instead must rely on the representations of the governmental body requesting our opinion. *See generally* Open Records Decision Nos. 554 (1990), 552 (1990). The TDH informs this office that it “does not consider the requested release to be for statistical purposes.” Based on this representation, we conclude that the submitted information is confidential under section 92.006(a) of the Health and Safety Code, and must be withheld from the requestor under section 552.101 of the Government Code.²

²Because we conclude that the submitted information is confidential under the IPCA and excepted from release under section 552.101, we do not address your other arguments for exception.

You ask that we issue the TDH a previous determination regarding requests for EMS/Trauma Registry information. We decline to do so at this time. Therefore, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 202618

Enc. Submitted documents

c: Mr. Charles E. Begley
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(w/o enclosures)