



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2006

Mr. David V. Sorola
City Attorney
City of Del Rio
109 West Broadway
Del Rio, Texas 78840-5527

OR2006-03013

Dear Mr. Sorola:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 244918.

The City of Del Rio (the "city") received a request for all crime, accident, and incident reports related to a specified grocery store from January 1, 2002 to the present. You state, and provide documentation showing, that the requestor subsequently narrowed her request to include only documents and reports pertaining to accidents occurring in the parking lot of the grocery store. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's procedural obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the

written request. *See* Gov't Code § 552.301(b). Additionally, pursuant to section 552.301(e) of the Government Code, within fifteen business days of receiving the request, a governmental body that seeks to withhold information from disclosure is required to submit (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e)(1)(A).

You state that the city received the initial request for information on December 22, 2005. You state that the city asked the requestor to clarify and possibly narrow her request on January 10, 2006. You do not inform us that the city was closed for any of the business days between December 22, 2005 and January 6, 2006. Therefore, because the city sought clarification from the requestor more than ten business days after the city's receipt of the request, the statutory deadlines imposed by section 552.301 were not tolled. *See* Open Records Decision No. 663 at 5 (1999) (providing that statutory deadline is tolled during clarification process). You did not request a decision from this office until January 17, 2006. Furthermore, you did not submit your comments and the responsive information until January 24, 2006. Therefore, we find that the city failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address your arguments.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. The submitted information contains ST-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the

release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the requisite pieces of information. Accordingly, the city must withhold the submitted ST-3 accident report forms, which we have marked, pursuant to section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which provides, in pertinent part, as follows:

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.

Health & Safety Code § 773.091(b). This confidentiality provision, however, “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. *Id.* § 773.091(g).

After reviewing the submitted information, we agree portions of this information, which we have marked, consist of records of the identity, evaluation, or treatment of a patient by emergency medical services (“EMS”) personnel. You do not inform us that any of the exceptions to confidentiality set forth in section 773.093 apply in this instance. *See id.* § 773.093 (listing elements of consent for release of EMS records). Thus, except for the types of information listed in section 773.091(g), the city must withhold the EMS records we have marked under section 552.101 in conjunction with section 773.091(b) of the Health and Safety Code.

You also claim that some the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides, in pertinent part, as follows:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Information that is subject to section 159.002 confidentiality includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Based on our review of the information at issue, we find that none of this information is subject to the MPA and the city may not withhold it on that basis.

You note that the remaining information includes Texas motor vehicle record information. Section 552.130 of the Government Code provides, in pertinent part, as follows:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Accordingly, the city must withhold the Texas motor vehicle record information we have marked under section 552.130.

The remaining information also includes social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Therefore, the city must withhold the social security numbers contained in the submitted information under section 552.147.¹

In summary, we conclude as follows: (1) the city must withhold the ST-3 accident report forms we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (2) except for the types of information listed in section 773.091(g) of the Health and Safety Code, the city must withhold the EMS records we have marked under section 552.101 of the Government Code in conjunction with section

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

773.091(b) of the Health and Safety Code; (3) the marked Texas motor vehicle record information must be withheld under section 552.130 of the Government Code; and (4) the submitted social security numbers must be withheld under section 552.147 of the Government Code. The remaining information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read 'Caroline E. Cho', with a long, sweeping horizontal stroke extending to the right.

Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 244918

Enc. Submitted documents

c: Ms. Leslie A. Kassahn
Shelton & Valadez
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(w/o enclosures)