



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2006

Mr. John T. Patterson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2006-06174

Dear Mr. Patterson:

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# 251683.

The Waco Police Department (the "department") received two requests for information regarding a specified incident. You state that the department will release some of the requested information to the requestors, but claim that the submitted 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.

Section 552.101 of the Government Code 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 made confidential by other statutes. You contend that the originating telephone number and address of a 9-1-1 caller contained in Exhibit 3 are excepted from disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand the City of Waco to be part of an emergency communication district that was established under

section 772.318.¹ Thus, based on your representations and our review, we determine that the highlighted telephone number and address are excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

You contend that a portion of one of the submitted photographs is excepted from disclosure under section 552.101 in conjunction with section 773.091(b) of the Health and Safety Code. Access to emergency medical service ("EMS") records is governed by the provisions of the Emergency Medical Services Act, Health and Safety Code sections 773.091 through 773.173. *See* Open Records Decision No. 598 (1991). Section 773.091(b) provides 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 "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). Upon review, however, we are unable to discern whether the document depicted in the submitted photograph constitutes an EMS record. Furthermore, we note that the document at issue in the submitted photograph concerns an individual who was deceased at the time of treatment. The term "patient" is not defined for purposes of section 773.091 of the Health and Safety Code. When a word used in a statute is not defined and that word is "connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art." Gov't Code § 312.002; *see also Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 485 (Tex. 1998). Taber's Cyclopedic Medical Dictionary defines "patient" as "one who is sick with, or being treated for, an illness or injury; [or] . . . an individual receiving medical care." Taber's Cyclopedic Medical Dictionary 1446 (17th ed. 1989). We also note that other statutes dealing with medically related professions generally define patient as an individual who consults a health care professional. *See* Health & Safety Code § 611.001 (mental health records), Occupations Code §§ 159.001 (physician records), 201.401 (chiropractic records), 202.401 (podiatric records), 258.101 (dental records). Because the generally accepted medical definition of patient indicates that the term refers to a living individual, we find that it does not encompass the record at issue here. Thus, no portion of the submitted photograph may be withheld under section 552.101 of the Government Code on the basis of section 773.091(b) of the Health and Safety Code.

¹Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

Next, you assert that some of the submitted photographs are excepted from disclosure under section 552.101 based on the United States Supreme Court's holding in *National Archives and Records Administration v. Favish* that surviving family members can have a privacy interest in information relating to their deceased relatives. See 541 U.S. 157, 167-171 (2004). You provide documentation showing that the department notified a family member of the deceased individual of the request and of her right to submit comments to this office objecting to the release of the information at issue. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have not, however, received any correspondence from the family member of the deceased individual. Therefore, she has not asserted a privacy interest in the submitted photographs. Accordingly, we find that the photographs may not be withheld under section 552.101 based on the holding in *Favish*.

We finally consider your argument under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement 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. The department must withhold the marked Texas motor vehicle record information under section 552.130. You have also submitted a CD with photographs, some of which contain motor vehicle registration information. Pursuant to section 552.130, the department must withhold those portions of the photographs that reveal Texas motor vehicle registration information.

In summary, the originating address and telephone number of a 9-1-1 caller you have highlighted in Exhibit 3 must be withheld under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. The department must withhold Texas motor vehicle record information under section 552.130 of the Government Code. The remainder of the submitted information must be released to the requestors.

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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 251683

Enc. Submitted documents

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