ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2006

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P. O. Box 469002
Garland, Texas 75046-9002

OR2006-11774

Dear Mr. Mann:

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# 261593.

The Garland Fire Department (the "department") received a request for all information, including reports and photographs, pertaining to a fire at a given address. You state that you have released responsive photographs, the fire incident report, and building inspection information regarding the fire. However, you claim that the remaining 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 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." Section 552.101 encompasses section 773.091 of the Health and Safety Code. Section 773.091 is applicable to information that relates to the provision of emergency medical services and provides in part:

> (a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.
>
> (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.
>
> (c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(a)-(c). Section 773.091 further provides, however, that

> [t]he 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.

Id. § 773.091(g). You inform us that the submitted information consists of records of the identity, evaluation, or treatment of patients that were created and are maintained by emergency medical services personnel of the City of Garland. Based on your representations and our review of the information in question, we agree that the information you have marked is confidential under section 773.091 of the Health and Safety Code. We note that none of the exceptions to confidentiality under section 773.091 appear to be applicable in this instance. *See id.* §§ 773.092, .093. Therefore, except as specified by section 773.091(g), the department must withhold the marked information under section 552.101 of the Government Code.[1]

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).

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[1]As this ruling is dispositive, we need not address your remaining argument under common-law privacy.

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,

Michael A. Lehmann
Assistant Attorney General
Open Records Division

MAL/dh

Ref: ID# 261593

Enc. Submitted documents

c: Ms. Shelby R. Colburn
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(w/o enclosures)