



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2008

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

OR2008-02169

Dear Mr. Risley:

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# 302350.

The City of Victoria (the "city") received a request for the 9-1-1 records of a specified individual at a specific time. 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 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. Section 552.101 encompasses information made confidential by other statutes. Section 773.091 of the Health and Safety Code provides in part the following:

- (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.

Health & Safety Code § 773.091(a),(b). You claim that the submitted information, a recording between a caller and a 9-11 dispatcher, is excepted from disclosure under section 773.091. However, after reviewing the submitted information, we are unable to conclude that the 9-1-1 call constitutes a communication between the patient and emergency medical services personnel. *See id.*; *see also* § 773.003(10) (defining “emergency medical services personnel”). Furthermore, the 9-1-1 call does not constitute a communication between a patient and a physician providing medical supervision to the emergency medical service personnel. Thus, subsection 773.091(a) of the Health and Safety Code does not apply to this recording. We also conclude that the recording at issue does not constitute a record “of the identity, evaluation, or treatment” of the patient by emergency medical services personnel or by a physician providing medical supervision. *See* Health and Safety § 773.091(b); § 773.003(10). Accordingly, section 773.091 does not apply and the city may not withhold the submitted information under this statute.

We note, however, that the submitted audio recording contains information that may be excepted from disclosure under section 552.1175 of the Government Code.¹ Section 552.1175 provides in part as follows:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual’s choice on a form provided by the governmental body, accompanied by evidence of the individual’s status.

Gov’t Code § 552.1175(a), (b). The city must withhold the personal information we have marked in the submitted audio recording under section 552.1175 to the extent that the information relates to a currently licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b), and release the remainder of the audio recording. In the event that the city does not have the technological capacity to redact such

¹The Office of the Attorney General will raise mandatory exceptions like section 552.1175 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information from the audio recording, we conclude that the city must withhold the recording in its entirety. If the city does not receive the appropriate election, the submitted audio recording must be released in its entirety.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

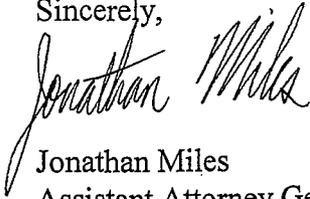
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 cursive script that reads "Jonathan Miles". The signature is written in dark ink and is positioned to the left of the typed name.

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 302350

Enc. Submitted documents

c: Mr. Doug Tilsdale
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Victoria, Texas 77901
(w/o enclosures)