



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 23, 2009

Ms. Sylvia McClellan  
Assistant City Attorney  
City of Dallas  
Criminal Law and Police Section  
1400 South Lamar  
Dallas, Texas 75215

OR2009-00916

Dear Ms. McClellan:

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# 332807. (DPD Request No. 2008-7545)

The Dallas Police Department (the "department") received a request for information pertaining to a specified investigation. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted documents include peace officer's crash reports that were completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See id.* § 550.065. Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the department with two of the three specified items of information. Therefore, the crash reports that we have

marked must be released in their entirety pursuant to section 550.065(c)(4) of the Transportation Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. The submitted information also includes emergency medical service ("EMS") records that are subject to chapter 773 of the Health and Safety Code, which is encompassed by section 552.101. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. *See* Open Records Decision No. 598 (1991). Section 773.091 provides in part the following:

(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.

...

(g) The 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(b), (g). We have marked the information that constitutes EMS records pursuant to section 773.091. We note, however, that records that are confidential under section 773.091 may be disclosed to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information." *Id.* § 773.092(e)(4), .093. Among the individuals authorized to act on the patient's behalf in providing written consent is a "personal representative" if the patient is deceased. *Id.* Section 773.093 provides that a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. Thus, the department must withhold the marked EMS records under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g). However, the department must release the EMS records on receipt of proper consent under section 773.093(a). *See id.* §§ 773.092, .093.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

With regard to the rest of the submitted information, including any information encompassed by section 773.091(g) of the Health and Safety Code that is not otherwise subject to release under sections 773.092 and 773.093, we address section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the submitted information is related to an internal affairs investigation. Section 552.108 is generally not applicable to records of an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (addressing statutory predecessor to Gov’t Code § 552.108). You state, however, that the internal affairs investigation is related to a pending criminal investigation. Based on your representation and our review of the information at issue, we find that release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref’d n.r.e., 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the remaining submitted information under section 552.108(a)(1).

In summary, the department must release the submitted crash report forms, which we have marked, in their entirety pursuant to section 550.065 of the Transportation Code. The marked EMS records must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the department receives the required consent for release under sections 773.092 and 773.093 of the Health and Safety Code. The department may withhold the rest of the submitted information, including any information encompassed by section 773.091(g) that is not otherwise subject to release under sections 773.092 and 773.093, under section 552.108(a)(1) of the Government Code, except for basic information that must be released under section 552.108(c). As we are able to make these determinations, we do not address your other argument against disclosure.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/eeg

Ref: ID# 332807

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)