



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2009

Ms. Evelyn Njuguna
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001

OR2009-04590

Dear Ms. Njuguna:

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# 339258.

The Houston Police Department (the "department") received a request for information pertaining to incident number 123071708P. You state that the "Public Release Information" will be released to the requestor.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains a CR-3 accident report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) 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. *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 pieces of information specified by the statute.² *Id.* The requestor has provided the department with

¹We assume that the "Public Release Information" you will release is the basic information referred to under section 552.108(c) of the Government Code. Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

²Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

two of the three pieces of information pursuant to section 550.065(c)(4). Although you contend that some information in the report is excepted from disclosure under sections 552.108 and 552.130, the exceptions found in the Act generally do not apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Thus, the department must release the accident report in its entirety to the requestor.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 773.091 of the Health and Safety Code provides in relevant 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 "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).

A portion of the remaining submitted information 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), 773.093. 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 the following: (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. Accordingly, if the requestor provides sufficient evidence that he is the authorized representative of the deceased individual, then the department must release the submitted EMS documents to the requestor in their entirety. *See id.* §§ 773.092, 773.093; *see also* Open Records Decision No. 632 (1995). If the requestor does not provide the proper authorization, then, with the exception of the information subject to section 773.091(g), the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

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 your argument under section 552.108 of the Government Code. Section 552.108(a)(1) of the Government Code 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.” See Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See *id.* §§ 552.108(a)(1), 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal case. Based on this representation, we conclude that the release of this 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. 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). As our ruling is dispositive, we need not address your remaining argument against disclosure.

In summary, the department must release the marked CR-3 accident report to the requestor. 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). With the exception of the basic information you state will be released, the department may withhold the remaining 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.

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, 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 339258

Enc. Submitted documents

cc: Requestor
(w/o enclosures)