



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2009

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-05124

Dear Ms. Aguilar:

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# 340326.

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specific incident. You state you are releasing some of the requested information to the requestor. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we must address the department's obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You state that the department received the request on January 26, 2009, but you did not provide the specific information requested as required by section 552.301(e) until February 18, 2009. Consequently, we find that the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). Because sections 552.101, 552.117, 552.1175, and 552.130 of the Government Code can provide compelling reasons to withhold information, we will address your arguments under these exceptions.

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 protected by other statutes, such as section 773.091 of the Health and Safety Code. Section 773.091 provides in relevant part:

(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.

Health & Safety Code § 773.091(b), (g). Thus, except for the information specified in section 773.091(g), emergency medical services ("EMS") records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. 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.* § 773.093. 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 EMS records we have marked 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.

Next, you argue that some of the remaining information includes the originating telephone number and address of a 9-1-1 caller protected from public 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 authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 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)*. You state that the City of Corpus Christi (the "city") is within an emergency communication district that is subject to section 772.318. Based on your representations and our review, we find that the originating telephone number and address of the 9-1-1 caller that you have marked are confidential under section 772.318 of the Health and Safety Code. Therefore, the department must withhold this information under section 552.101 of the Government Code.

Section 552.101 also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. There is no indication that the exceptions to confidentiality provided in section 11 are applicable in this instance. Therefore, the submitted autopsy photographs are confidential under article 49.25 of the Code of Criminal Procedure and must be withheld under section 552.101 of the Government Code.

You argue that portions of the remaining information are excepted from public disclosure under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials for employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You have submitted documentation showing that the two city employees whose information is at issue timely elected confidentiality under section 552.024. Accordingly, the department must withhold the personal information we have marked under section 552.117(a)(1) of the Government Code.

You seek to withhold the personal information of two named peace officers under section 552.117(a)(2). Section 552.117(a)(2) excepts from disclosure the home address and telephone number, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under sections 552.024 or 552.1175 of the Government Code.¹ Gov't Code § 552.117(a)(2). Section 552.117 only applies to records that the governmental body is holding in an employment capacity. We note that one of the named officer's personal information is contained in an incident report and form that are maintained by the department in a law enforcement capacity, rather than in an employment capacity. Therefore, since this information is not held by the department in its employment capacity, the department may not withhold this officer's personal information in the documents at issue under section 552.117(a)(2). However, it appears that a submitted e-mail is held by the department in its capacity as employer. Thus, the department must withhold the information we have marked within the e-mail under section 552.117(a)(2).

You also argue that section 552.1175 of the Government Code may apply. Section 552.1175 of the Government Code 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

¹Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

(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(b). You state that the information contained on a submitted incident report and form relates to a currently licensed peace officer who has elected to restrict access to the information in accordance with section 552.1175(b). Thus, the information we have marked must be withheld from disclosure under section 552.1175.

You contend that some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1)-(2). Accordingly, the department must withhold the Texas motor vehicle record information you have marked under section 552.130.

Finally, you state that portions of the submitted information are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, unless the department receives proper consent, the department must withhold the EMS records we have marked 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). The department must also withhold: (1) the originating telephone number and address of the 9-1-1 caller that you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, (2) the submitted autopsy photographs under section 552.101 of the Government Code in conjunction with article 49.25 of the Code of Criminal Procedure, (3) the information we have marked under section 552.117(a)(1) of the Government Code, (4) the information we have marked under section 552.117(a)(2) of the Government Code, (5) the information we have marked under section 552.1175 of the Government Code, and (6) the Texas motor vehicle record information you have marked under section 552.130 of the Government Code. The department must release the remaining information, but any information protected by copyright must be released in accordance with copyright law.²

²As our ruling is dispositive, we need not address your remaining 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, 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 340326

Enc. Submitted documents

cc: Requestor
(w/o enclosures)