



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2009-07614

Dear Ms. Sandoval-Walker:

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# 344998.

The City of El Paso (the "city") received a request for three categories of information pertaining to a specified incident. You state you have released some of the requested information to the requestor. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the city failed to raise section 552.101 within the ten business-day deadline mandated by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Generally, if a governmental body fails to timely raise an exception, that exception is waived. However, because section 552.101 is a mandatory exception that can provide a compelling reason to withhold information, we will consider your argument under this exception. *See id.* § 552.302; *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 section 552.302).

Next, we note that Exhibit B includes court-filed documents. Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code

and may only be withheld if expressly confidential under other law. *See* Gov't Code § 552.022(a)(17) (information contained in public court record is not excepted from required disclosure under Act unless expressly confidential under other law). Although you assert this information is excepted under section 552.108 of the Government Code, that section is a discretionary exception within the Act and not "other law" that makes information confidential. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the court-filed documents we have marked may not be withheld under section 552.108. As you raise no further exceptions to disclosure of this information, the information subject to section 552.022(a)(17) must be released to the requestor.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide a representation from the El Paso District Attorney's office reflecting, that Exhibit B relates to a pending criminal investigation. Based on these representations and our review, we conclude that the release of the remaining information in Exhibit B 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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*. *See* 531 S.W.2d at 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code.

You raise section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code for the submitted patient care report marked as Exhibit E. Section 552.101 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. Section 773.091 of the Health and Safety Code provides in relevant part as follows:

- (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(b)-(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). We note that the submitted patient care report concerns an individual who was determined to be deceased at the scene of the incident. The term "patient" is not defined for the purposes of section 773.091 of the Health and Safety Code. When a word used in a statute is not defined and that word is "connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art." Gov't Code § 312.002; *see also Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 485 (Tex. 1998). Taber's Cyclopedic Medical Dictionary defines "patient" as "one who is sick with, or being treated for, an illness or injury; [or] . . . an individual receiving medical care." Taber's Cyclopedic Medical Dictionary 1446 (17th ed. 1989). We also note that other statutes dealing with medically related professions generally define patient as an individual who consults a health care professional. *See* Health & Safety Code § 611.001 (mental health records), Occ. Code §§ 159.001 (physician records), 201.401 (chiropractic records), 202.401 (podiatric records), 258.101 (dental records). Thus, because the generally accepted medical definition of patient indicates that the term refers to a living individual, we find that the term does not encompass information that concerns the deceased individual. Thus, Exhibit E is not confidential under section 773.091 of the Health and Safety Code and may not be withheld from the requestor on that basis under section 552.101 of the Government Code.

In summary, the information we have marked in Exhibit B under section 552.022(a)(17) of the Government Code must be released. With the exception of basic information, which

must be released, the city may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code.¹ The remaining information must be released.

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# 344988

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹We note that basic information includes the arrestee's social security number. See Open Records Decision No. 127 (1976). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office.