



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2009

Mr. Robert Massey
Assistant City Attorney II
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2009-10101

Dear Mr. Massey:

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# 349621 (Wichita Falls ID# 90).

The City of Wichita Falls (the "city") received a request for information pertaining to accidents that occurred at a specified location during a specified time period. You state that most of the responsive information has been released to the requestor. You claim that the remaining responsive information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert some of the submitted information is excepted under section 552.101, which 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. The submitted information contains two CR-3 accident 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) 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.¹ *Id.* The requestor has provided the city with two of the three pieces of information described in section 550.065(c)(4). Although you contend that some information in the reports is excepted from disclosure under section 552.130, as a general rule, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. Attorney General Opinion DM-146 at 3 (1992); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, the city must release the accident reports in their entirety to the requestor.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which 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. We understand that the City of Wichita Falls is within an emergency communication district that is subject to section 772.318. You claim that the addresses and telephone numbers furnished by the 9-1-1 service supplier are confidential under section 772.318 of the Health and Safety Code. Although you argue the names of the 9-1-1 callers should also be withheld under this section, the plain language of section 772.318 states, and this office has opined, that confidentiality only applies to originating telephone numbers and the addresses associated with those numbers. *See* Open Records Decision Nos. 649 at 3 (1996) (section 772.318 makes confidential current telephone numbers of subscribers and the addresses associated with the numbers, and nothing more), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Therefore caller names may not be withheld under this section. Upon review, the addresses within the dispatch logs appear to be cellular telephone tower locations, which are not the originating addresses of 9-1-1 callers. Thus, to the extent the addresses we marked under section 772.318 correspond to cellular telephone tower locations, they may not be withheld under section 772.318. However, to the extent the marked telephone numbers and addresses are the originating telephone numbers and addresses of callers supplied by a 9-1-1 service supplier, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 also encompasses section 773.091 of the Health and Safety Code, which provides in relevant part as follows:

¹Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

(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). 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). Thus, except for the information specified in section 773.091(g), emergency medical services (“EMS”) records pertaining to the evaluation or treatment of a patient 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.

You assert the submitted dispatch logs, numbered SQ090100606 and SQ090100609, are excepted under section 552.101 in conjunction with section 773.091(b) of the Health & Safety Code. However, you do not inform us, and it is not apparent from the submitted information, that the dispatchers who created these logs are certified emergency medical services personnel or that these dispatch logs constitute records of the identity, evaluation, or treatment of a patient for purposes of section 773.091(b). Neither do you demonstrate that these dispatch logs are maintained by an emergency medical services provider. Thus, we conclude you failed to establish how the submitted dispatch logs constitute EMS records made confidential under section 773.091(b), and they may not be withheld under this provision.

You also assert the submitted ambulance report is confidential under section 773.091(b). The term “patient” is not defined for 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 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). The submitted ambulance report states the individual to whom the report concerns was deceased when emergency personnel arrived, and no medical treatment was performed on this individual. You have, therefore, failed to demonstrate this individual was a patient for the purposes of chapter 773 of the Health & Safety Code. Thus, no portion of the submitted ambulance report may be withheld under section 552.101 of the Government Code on the basis of section 773.091(b) of the Health and Safety Code.

However, the submitted fire department report contains EMS records that are subject to chapter 773 of the Health and Safety Code. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the pages we marked in this report may only be released in accordance with chapter 773 of the Health & Safety Code. Some of these documents are EMS records of the requestor's client. 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." Health & Safety Code §§ 773.092(e)(4), .093. The requestor in this instance has provided an authorization to release medical records signed by the patient. Thus, if the city finds that this release fulfills the requirements of section 773.092(e)(4), the EMS records of the requestor's client must be released. Otherwise, with the exception of the information subject to section 773.091(g), this information must be withheld with the remaining information we marked under section 552.101 in conjunction with section 773.091(b) of the Health & Safety Code.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides, in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

Occ. Code § 159.002(a), (b). The MPA defines a "patient" as "a person who, to receive medical care, consults with or is seen by a physician." *Id.* §159.001. You assert the submitted reports prepared by the Tarrant County and Wichita County Medical Examiners are confidential pursuant to section 159.002 of the Occupations Code. These records, however, pertain to the autopsy of the deceased individual. In providing autopsy services, a medical examiner is not providing medical care to a patient as contemplated by chapter 159

of the Occupations Code. Because you failed to demonstrate the submitted medical examiners' reports pertain to a patient for purposes of the MPA, we conclude they are not medical records subject to the MPA and may not be withheld under section 552.101.

Finally, you assert some of the remaining information is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a driver's license or permit issued by an agency of this state. See Gov't Code § 552.130(a)(1). But section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.) (Texas does not recognize relational or derivative right of privacy); see also Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Accordingly, to the extent the motor vehicle record information we have marked pertains to a vehicle owned by a living person, it must be withheld under section 552.130; however, this information may not be withheld under section 552.130 if it only pertains to a deceased individual. Some of the Texas motor vehicle record information pertains to the requestor's client. Pursuant to section 552.023, the requestor has a right of access to her client's Texas motor vehicle record information. See *id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, this information may not be withheld under section 552.130 in this instance. Thus, pursuant to section 552.130, the city must withhold the Texas motor vehicle information we marked in the submitted documents, as well as the license plate numbers which do not pertain to the requestor's client in the submitted photographs and video, unless such information pertains to a vehicle in which no living person has an ownership interest.

In summary, the city must release the submitted CR-3 crash reports in their entirety pursuant to section 550.065(c) of the Transportation Code. The city must withhold the address and telephone information we have marked under section 772.318 of the Health & Safety Code in the submitted dispatch logs to the extent it is the originating information of a caller and was provided by a 9-1-1 service supplier. The city must also withhold the EMS records we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except for the information specified by section 773.091(g), but must release the records pertaining to the requestor's client if the city determines the patient's consent is proper under section 773.093(a). The city must withhold the Texas motor vehicle record information we marked in the submitted documents, as well as the license plate numbers which do not pertain to the requestor's client in the submitted photographs and video, under section 552.130, unless such information pertains to a vehicle in which no living person has an ownership interest. 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,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long horizontal flourish extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 349621

Enc. Submitted documents

cc: Requestor
(w/o enclosures)