



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2009

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

OR2009-10270

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# 350129.

The City of El Paso (the "city") received a request for thirteen categories of information pertaining to a specified traffic fatality. You state that the city has released some of the requested information to the requestor. You also state that the city does not have any information responsive to portions of the request.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²Although you contend that certain information you have marked in Exhibit D is excepted from disclosure pursuant to our ruling in Open Records Decision No. 506 (1988), we note section 552.108 is the proper exception to raise for your claim. *See* Open Records Decision No. 506 (1988) (determining that cellular telephone numbers where the service is paid for by the governmental body may be protected by the statutory predecessor to section 552.108(b) in certain instances).

Initially, we note that the submitted information contains a CR-3 accident report form that appears to have been 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, a governmental entity is required to release a copy of an accident report to a person who provides the entity with two or more pieces of information specified by the statute. *Id.* Here, the requestor has provided the city with all three of the required pieces of information. Although you contend that portions of this report are excepted from disclosure under section 552.130 of the Government Code, 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 city must release the CR-3 accident report in Exhibit B, which we have marked, in its entirety to this requestor pursuant to section 550.065(c)(4) of the Transportation Code.

We next address your argument that Exhibit C, which consists of a city fire department patient care report, is excepted in its entirety under section 552.101 of the Government Code. 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, such as section 773.091 of the Health and Safety Code, which is applicable to emergency medical services ("EMS") information and provides in 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.

(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). We note that Exhibit C concerns an individual who was determined to be deceased at the scene of the accident. 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 the patient care form for the individual who was deceased at the scene of the accident. Accordingly, Exhibit C 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.

Next, you claim that the telephone number and address you marked in Exhibit D are subject to chapter 772 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses chapter 772, which makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. We understand El Paso County is part of an emergency communication district established under section 772.318 of the Health and Safety Code. You state that the telephone number and address that you have marked in Exhibit D were furnished by a 9-1-1 service supplier, and, as such are subject to section 772.318. Accordingly, the city must withhold the originating telephone number and address of the 9-1-1 caller you have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

We understand you to contend that the cellular telephone numbers assigned to city employees, which you have marked in Exhibit D, are excepted from disclosure under section 552.108(b)(1) of the Government Code. In Open Records Decision No. 506 (1988), we determined that the statutory predecessor to section 552.108(b) excepted from disclosure “the cellular mobile phone numbers assigned to [Harris C]ounty officials and employees with specific law enforcement responsibilities.” ORD 506 at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* A governmental body that seeks to withhold any information under section 552.108(b)(1) must provide this office with detailed arguments explaining how the release of that information would interfere with law enforcement. This office makes a determination of whether the release of particular information would interfere with law

enforcement by considering the arguments of the governmental body and reviewing the information at issue on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). In this instance, you do not identify the city employees whose cellular telephones are at issue as having specific law enforcement responsibilities, nor do you provide any explanation of how release of these cellular telephone numbers would interfere with those responsibilities, if any. Therefore, we find that you have failed to demonstrate that the release of the city employees' cellular telephone numbers you have marked would interfere with law enforcement. Thus, we conclude that the city may not withhold the cellular telephone numbers of the city employees you marked in Exhibit D under section 552.108(b)(1) of the Government Code. As you raise no further exceptions against the disclosure of these cellular telephone numbers, we have marked them for release.

You raise section 552.130 of the Government Code for the information you have marked in Exhibits B and D. Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1)-(2). We note that section 552.130 protects the privacy interests of individuals, and because the right of privacy is purely personal, it lapses upon death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). In this instance, you have only marked Texas motor vehicle information pertaining to a deceased individual. Accordingly, the city may not withhold any of the information you have marked under section 552.130. However, the submitted dispatch recording, photographs, and videos do contain Texas license plate numbers that do not pertain to the deceased individual. Accordingly, the city must withhold the Texas license plate numbers that do not pertain to the deceased individual on the submitted dispatch recording, photographs, and videos under section 552.130 of the Government Code. If the city lacks the technical capability to redact the information subject to section 552.130 in the submitted videos, the city must withhold the videos in their entirety.

In summary, the city must withhold the originating telephone number and address of the 9-1-1 caller you have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The city must withhold the Texas license plate numbers that do not pertain to the deceased individual on the submitted dispatch recording, photographs, and videos under section 552.130 of the Government Code. If the city lacks the technical capability to redact the information subject to section 552.130 in the submitted videos, the city must withhold the videos in their entirety. The remaining information must be released to the requestor.

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/eeg

Ref: ID# 350129

Enc. Submitted documents

c: Requestor
(w/o enclosures)