



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2009

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

OR2009-12718

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# 354703.

The City of El Paso (the "city") received a request for the following information related to a specified incident: (1) EMS, police, and fire records; (2) 9-1-1 tapes; and (3) video from a specific traffic surveillance camera. You state that the city does not maintain any information responsive to request item (3).¹ You also state that the city has released some responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes a CR-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a

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

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 Public Safety 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 of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the city with all three pieces of information specified in section 550.065(c)(4). Although you contend that the report is excepted from disclosure under sections 552.108 and 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). Therefore, the city must release the submitted CR-3 accident report form to this requestor pursuant to section 550.065(b) of the Transportation Code.

Next, we address your argument that the remainder of the submitted information is excepted from required public disclosure under section 552.108(a)(1) of the Government Code. This exception generally protects information that, if released, would interfere with the detection, investigation, or prosecution of crime, but does not make information confidential. *See* Gov't Code § 552.108(a)(1). We note, however, that the submitted information includes records that are subject to section 773.091 of the Health and Safety Code, which contains a right of access provision. *See* Health & Safety Code §§ 773.092(e)(4), .093. This office has found specific statutory right of access provisions prevail over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986). Accordingly, we will address the submitted emergency medical service ("EMS") records under section 773.091.

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 exception encompasses information made confidential by other statutes, including chapter 773 of the Health and Safety Code, which pertains to EMS records. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. *See* Open Records Decision No. 598 (1991). Section 773.091 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.

...

(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). We have marked the information that constitutes confidential EMS records. These records pertain to the requestor's client; thus, the requestor may have a right of access to these records. We note 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. 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, if the city receives proper consent, the marked EMS records must be released in their entirety in accordance with chapter 773 of the Health and Safety Code. If the city does not receive proper consent, then with the exception of the information subject to section 773.091(g), which is not confidential, the marked EMS records must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. We will address your claim under section 552.108 of the Government Code for the remaining information, including the information subject to section 773.091(g).

Section 552.108(a)(1) 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[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remainder of the submitted information is related to an ongoing criminal investigation. *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). However, the submitted information contains a Statutory Warning and a Notice of Suspension. The city previously provided copies of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the city may not withhold the Statutory Warning and Notice of Suspension under section 552.108. Because the remaining submitted information has not been previously released, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, we find section 552.108(a)(1) is generally applicable to the remaining information. Based on your representation, we conclude that section 552.108(a)(1) is applicable in this instance.

However, 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d

at 186-88. The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the city may withhold the remaining information at issue under section 552.108(a)(1).²

In summary: (1) the city must release the submitted CR-3 accident report form pursuant to section 550.065(b) of the Transportation Code; (2) the city must withhold the marked EMS records under section 773.091 of the Health and Safety Code, except for the information specified by section 773.091(g), unless the city receives the required written consent for release under sections 773.092 and 773.093 of the Health and Safety Code; and (3) with the exception of basic information and the marked Statutory Warning and Notice of Suspension, the city may withhold the remainder of the submitted information under section 552.108(a)(1) of the Government Code.³

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, toll free, at (888) 672-6787.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

²Basic information includes an arrested person's social security number, but 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 under the Act. Gov't Code § 552.147(b).

³As this ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 354703

Enc. Submitted documents

cc: Requestor
(w/o enclosures)