



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 16, 2009

Ms. Evelyn Njuguna  
Assistant City Attorney  
City of Houston Legal Department  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-13073

Dear Ms. Njuguna:

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# 360092.

The City of Houston (the "city") received a request for records related to calls made by or for a named individual to the Houston Fire Department. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

You acknowledge, the requestor asserts, and we agree that the city failed to comply with section 552.301 in requesting this decision. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the requirements of section 552.301 results in

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the legal presumption that requested information is public and must be released. Information 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 section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You claim the submitted documents are excepted from disclosure under section 552.101 of the Government Code. Because section 552.101 can provide a compelling reason to withhold information, we will address your claim under this exception.

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 that other statutes make confidential, including chapter 773 of the Health and Safety Code, which pertains to Emergency Medical Services (“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 the following:

(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.

Health & Safety Code § 773.091(b). 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). Upon review, we find that the submitted information constitutes EMS records that are subject to chapter 773 of the Health and Safety Code. Accordingly, the city must withhold the submitted EMS records under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except for information subject to section 773.091(g), which 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](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,

A handwritten signature in cursive script that reads "Paige Savoie".

Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/eeg

Ref: ID# 360092

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)