



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2009

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

OR2009-15431

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# 359723 (City ID # 220).

The City of Wichita Falls (the "city") received a request for the first responder's report pertaining to a specified traffic incident involving the requestor's client as well as any photographs of the scene, vehicles, and individuals involved in the incident.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the portion of the request seeking photographs. To the extent any information responsive to this portion of the request existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

¹We note the requestor has specifically excluded medical information pertaining to any individual other than her client. Accordingly, this information is not responsive to this request. We do not address the public availability of non-responsive information and the city is not required to release information that is not responsive to the present request.

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 exception encompasses information made confidential by other statutes, such as section 773.091 of the Health and Safety Code, which provides in relevant 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). Thus, except for the information specified in section 773.091(g), emergency medical services ("EMS") records 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-.093. We note, however, 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." *See id.* § 773.092(e)(4). 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. 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 773.093, the EMS records of the requestor's client may not be withheld under section 773.091(b). Otherwise, with the exception of the information subject to section 773.091(g), the submitted information must be withheld under section 552.101 in conjunction with section 773.091(b).

In the event the city determines the submitted release fulfills the requirements of section 773.093 of the Health and Safety Code, we address your argument under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code for portions of the EMS records. 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 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 the city is within an emergency

communication district that is subject to section 772.318. You claim the addresses and telephone numbers furnished by the 9-1-1 service supplier are confidential under section 772.318. Upon review, we find that, 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 is generally confidential pursuant to section 772.318. However, because the access provision to confidential information under section 773.091 of the Health and Safety Code conflicts with the confidentiality provision found in section 772.318, we must determine which statute governs access to these records.

Where information falls within both a general and a specific statutory provision, the specific statutory provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is the general provision prevail. *See* Gov't Code § 311.026; *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In applying the Code Construction Act, we note the access provision of section 773.092(e)(4) of the Health and Safety Code authorizing release of confidential EMS records subject to section 773.091 of the Health and Safety Code applies specifically to EMS records, provided a consent to release the information complies with the requirements of section 773.093 of the Health and Safety Code. In contrast, section 772.318 of the Health and Safety Code generally applies to the originating telephone numbers and addresses supplied by a 9-1-1 provider contained in any record. Furthermore, we note the access provision of section 773.092 was enacted after section 772.318.² In *Glasscock Underground Water Conservation District v. Pruit*, the Eighth Court of Appeals found "the [l]egislature is assumed to enact a statute with complete knowledge of the existing law and with reference to it." *Glasscock Underground Water Conservation Dist. v. Pruit*, 915 S.W.2d 577, 581 (Tex. App.—El Paso 1996, no writ) (citing *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990)). Because section 773.092 was enacted after section 772.318, the legislature is presumed to have been aware of section 772.318 when it enacted section 773.092 requiring the release of EMS records in their entirety. Thus, we find the access provision of section 773.092(e)(4) prevails over section 772.318 in this matter. Accordingly, if the city releases the EMS records to this requestor pursuant to section 773.092(e)(4), none of the originating telephone numbers and addresses supplied by a 9-1-1 provider may be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

In summary, if the city finds the submitted release fulfills the requirements of section 773.093 of the Health and Safety Code, the EMS records of the requestor's client must be released. Otherwise, with the exception of the information subject to section 773.091(g) of the Health and Safety Code, the submitted information must be

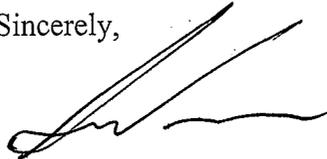
²Act of June 1991, 72nd Leg., ch. 605, § 8, 1991 Tex. Gen. Laws 2203, 2204 (Vernon) (codified as section 773.092 of the Health and Safety Code); Act of June 1989, 71st Leg., ch. 678, § 1, 1989 Tex. Gen. Laws 2230, 3069 (codified as section 772.318 of the Health and Safety Code).

withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 359723

Enc. Submitted documents

c: Requestor
(w/o enclosures)