



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2009

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

OR2009-17144

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# 363232 (City ID No. 242).

The City of Wichita Falls (the "city") received a request for 32 categories of information. You state that some responsive information has been released. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note you have only submitted information related to two of the 32 categories of requested information. To the extent any information responsive to that remaining 30 categories of the request existed on the date the city received the request, we assume you have released it to the requestor. If you have not released any such information, you must release it 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).*

Section 552.101 of the Government Code excepts from public 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 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). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. You state portion of the submitted information constitutes EMS records maintained by an EMS provider documenting emergency medical services provided to a patient by EMS personnel. Based on your representation and our review, we conclude a portion of the submitted information, which we have marked, constitutes EMS records that are confidential under section 773.091. As you acknowledge; 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.” *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. *Id.* § 773.093. In this instance, you state the requestor has not provided the proper authorization for release. Therefore, the city must withhold the submitted EMS records, which we have marked, under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the city receives the required consent for release of that information. *See id.* §§ 773.092, .093; Open Records Decision No. 632 (1995).

Section 552.101 of Government Code also encompasses information made confidential by chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with

chapter 772. See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

We understand that the city is part of an emergency communication district established under section 772.318. We have marked the telephone numbers of 9-1-1 callers. Provided that this information was furnished by a 9-1-1 service supplier, the city must withhold it under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

In summary, the city must withhold the submitted EMS records, which we have marked, under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the city receives the required consent for release of that information. The city must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, provided that this information was furnished by a 9-1-1 service supplier. 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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

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Enc. Submitted documents

c: Requestor
(w/o enclosures)