



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 13, 2011

Mr. Don Cheatham
General Counsel
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-06721

Dear Ms. Eales:

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# 417417 (GC No. 18372).

The Houston Police Department (the "department") received a request for the complete file of a specified accident. You state you will release some of the requested information. You claim that 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.

You assert the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. 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 section encompasses information made confidential by other statutes, such as section 773.091 of the Health and Safety Code, which is applicable to information relating to the provision of emergency medical services ("EMS") and provides, in pertinent 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). Section 773.091 further provides, however, that

[t]he 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.

Id. § 773.091(g). We note that information made confidential by section 773.091 may be released to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf." *Id.* §§ 773.092(e)(4), .093. Among the individuals authorized to act on the patient's behalf in providing written consent is a "personal representative," if the patient is deceased. *Id.* § 773.093(a); *see also* Open Records Decision No. 632 (1995) (defining "personal representative" for purposes of section 773.093). 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. Upon review, we find the information we have marked constitutes EMS records that are generally confidential under section 773.091. You state the department has not received consent for the release of this information. Therefore, we find these EMS records must be withheld 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). However, the marked EMS records must be released if the requestor provides the department with the required consent for release of the information in accordance with sections 773.092 and 773.093. *See id.* §§ 773.092, .093; ORD 632.

Upon review, we find that none of the remaining information in Exhibit B was created by EMS personnel or by a physician providing medical supervision. Consequently, you have failed to demonstrate how any portion of the remaining information constitutes records of the identity, evaluation, or treatment of a patient created by EMS personnel or a physician providing medical supervision. Accordingly, the remaining information may not be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

Section 552.101 also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations

allow each state to follow its individual laws with respect to the CHRI it generates. See *id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. See Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. See *generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. See *id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Further, CHRI does not include driving record information. See *id.* § 411.082(2)(B). Upon review, we find portions of the remaining information, which we have marked, consist of CHRI that is confidential under section 411.083. Thus, the department must withhold the marked information under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find you have not demonstrated the remaining information constitutes CHRI for purposes of chapter 411 of the Government Code. Accordingly, the remaining information may not be withheld under section 552.101 on that basis.

We note some of the remaining information is excepted from disclosure pursuant to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency. *Id.* § 552.130(a)(1), (2). The department must withhold the information we have marked in the submitted documents under section 552.130 of the Government Code.²

In summary, the department must withhold the EMS records 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). The department must withhold the CHRI we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. The department must withhold the Texas motor vehicle record

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver’s license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

information we have marked under section 552.130 of the Government Code. The remaining information must be released.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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 417417

Enc: Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released contains a social security number. 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).