



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2011

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

OR2011-07728

Dear Mr. Cheatham:

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# 419338 (GC No. 18416).

The Houston Police Department (the "department") received a request for information pertaining to a specified incident. You state the department will release a portion of the responsive information. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note the submitted information includes court-filed documents that are subject to disclosure under section 552.022 of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code, that section is a discretionary

¹We 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.

exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the department may not withhold the court-filed documents under section 552.108. As no other exceptions against its disclosure are raised, the marked court-filed documents must be released to the requestor.²

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. Section 552.101 encompasses information that other statutes make confidential, such as section 773.091 of the Health and Safety Code, which 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). 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. Upon review, we find the information you marked constitutes EMS records of the identity, evaluation, or treatment of patients and is confidential under section 773.091. We note that 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

²We note the requestor has a special right of access to his client's Texas motor vehicle record information being released in the court-filed documents in this instance. Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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. We note the requestor is the legal representative of one of the patients listed in the EMS reports. You state the department has not received adequate consent for release of this information. Therefore, the department must withhold the information you 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). However, the department must release the entirety the marked EMS records pertaining to the requestor's client on receipt of proper consent under section 773.093. *See id.* §§ 773.092, .093.

Section 552.108(a)(1) of the Government Code 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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the remaining information relates to a pending criminal investigation. Based upon your representation and our review, we conclude that the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the remaining information.

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the department may withhold the remaining information, including the information subject to section 773.091(g) of the Health & Safety Code, under section 552.108(a)(1) of the Government Code.

In summary, the department must release the information we have marked that is subject to section 552.022(a)(17) of the Government Code. The department must withhold the information you 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) of the Health and Safety Code. However, the department must release the entirety of the marked EMS records pertaining to the requestor's client on receipt of proper consent under section 773.093 of the Health and Safety Code. With the exception of basic information, which must be released, the department may withhold the remaining information, including

the information subject to section 773.091(g) of the Health & Safety Code, under section 552.108(a)(1) of the Government 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 419338

Enc. Submitted documents

c: Requestor
(w/o enclosures)