



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2015

Mr. Matthew L. Grove
Assistant County Attorney
County of Fort Bend
401 Jackson Street, Third Floor
Richmond, Texas 77469

OR2015-13252

Dear Mr. Grove:

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# 569496.

Fort Bend County Emergency Medical Service (the "county") received a request for (1) all emergency medical service ("EMS") call data files or reports from January 1, 2011, to April 1, 2015; (2) locations of all EMS units for each of the specified years; (3) reports or data on when EMS units were added or were out of service; and (4) the model, year, and mileage of all EMS units. 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. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note you have not submitted information responsive to items two, three, and four of the instant request. To the extent such information existed on the date the county received the request, we presume the county has released it. If not, the county must do so at this time. *See id.* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

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 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), 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 submitted information consists of EMS records subject to chapter 773. Thus, with the exception of the information subject to section 773.091(g), the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.¹

Section 552.101 of the Government Code also encompasses section 92.006 of the Health and Safety Code, which makes certain information reported to the Texas Department of State Health Services (the “department”) confidential. *See id.* § 92.006(a). Section 92.002 of the Health and Safety Code provides that “[s]pinal cord injuries, traumatic brain injuries, and submersion injuries are reportable to the department.” *Id.* § 92.002(a). Section 92.006 provides in relevant part:

(a) All information and records relating to injuries are confidential, including information from injury investigations. That information may not be released or made public on subpoena or otherwise, except that release may be made:

(1) for statistical purposes, but only if a person is not identified;

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(2) with the consent of each person identified in the information released; or

(3) to medical personnel in a medical emergency to the extent necessary to protect the health or life of a named person.

(b) The executive commissioner [of the Health and Human Services Commission] shall adopt rules establishing procedures to ensure that all information and records maintained by the department under [subchapter A of chapter 92 of the Health and Safety Code] are kept confidential and protected from release to unauthorized persons.

See id. § 92.006(a); Act of March 30, 2015, 84th Leg., R.S., S.B. 219, § 3.0317 (to be codified as an amendment to Health & Safety Code § 92.006(b)) (effective immediately). Section 92.005 of the Health and Safety Code provides “[s]ubject to the confidentiality provisions of this subchapter, the department may collect, or cause to be collected, medical, demographic, or epidemiologic information from any medical or laboratory record or file to help the department in the epidemiologic investigation of injuries and their causes.” Health & Safety Code § 92.005. Thus, the department is the only agency authorized to collect and maintain information pursuant to subchapter A of chapter 92 of the Health and Safety Code. *See id.*; Act of March 30, 2015, 84th Leg., R.S., S.B. 219, § 3.0317 (to be codified as an amendment to Health & Safety Code § 92.006(b)) (effective immediately). Accordingly, we find the confidentiality of section 92.006(a) only applies to information in the hands of the department. We therefore determine the information at issue is not confidential pursuant to section 92.006(a) of the Health and Safety Code and may not be withheld under section 552.101 of the Government Code on that basis.

You also assert the requested information is confidential under section 552.101 of the Government Code in conjunction with section 103.3(a) of title 25 of the Texas Administrative Code, which provides as follows: “[a]ll information and records relating to injuries received by the local health authority or the department, including information electronically submitted to the [Texas EMS/Trauma Registry] and information from injury investigations, are sensitive, confidential, and not public records.” 25 T.A.C. § 103.3(a). You state the department adopted sections 103.1 through 103.8 of title 25 of the Texas Administrative Code in accordance with chapter 92 of the Health and Safety Code. *See id.* § 103.1(a)(1). However, as noted above, section 92.006(b) of the Health and Safety Code only authorizes the executive commissioner to adopt rules to ensure certain information *maintained by the department* is kept confidential and protected from release to unauthorized persons. *See* Act of March 30, 2015, 84th Leg., R.S., S.B. 219, § 3.0317 (to be codified as an amendment to Health & Safety Code § 92.006(b)) (effective immediately). Upon review, we find section 103.3(a) does not make confidential EMS records maintained by the county for purposes of the Act. Therefore, we conclude the county may not withhold the submitted

information under section 552.101 of the Government Code in conjunction with section 103.3(a) of title 25 of the Texas Administrative Code.

In summary, with the exception of the information subject to section 773.091(g), the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 569496

Enc. Submitted documents

c: Requestor
(w/o enclosures)