



October 26, 2000

Ms. Tenley Aldredge  
Assistant County Attorney  
County of Travis  
314 West 11<sup>th</sup> Suite 300  
P.O. Box 1748  
Austin, Texas 78767

OR2000-4167

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#140056.

The Travis County District Attorney's Office (the "county") received a request for "[a]ll records, reports, photographs, diagrams, statements, test results and/or investigative material relating to the prosecution" of a named individual in a specified case. You explain that the county has released to the requestor "all court-filed records," and you have submitted for our review the remaining information that is responsive to the request. You assert this information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you assert and reviewed the submitted information.

We note at the outset that the submitted documents include emergency medical services ("EMS") records and records of the treatment of a patient by a physician. Access to these records is governed by provisions outside the Public Information Act (the "Act").

The Emergency Medical Services Act, found at sections 773.091 through 773.093 of the Health and Safety Code, governs the EMS records. Open Records Decision No. 598 (1991). Section 773.091 of the Health and Safety Code 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.

With the exception of the information described above in subsection (g), section 773.091 makes the EMS records confidential. Section 773.092 provides for exceptions to the confidentiality of these records, none of which appears to apply in this instance. Thus, except for the information in subsection (g) above which must be released, the county must withhold the EMS records.

The Medical Practice Act, found at subtitle B of title 3 of the Occupations Code, governs records of the treatment of a patient by a physician. Section 159.002(b) states:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

Section 159.002(b) makes confidential the physician treatment records. Sections 159.003 and 159.004 provide exceptions to this confidentiality provision, none of which appears to apply in this instance. Thus, the county must withhold the physician treatment records in their entirety.

Section 552.108 excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [required public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You cite to section 552.108(a)(3) and (b)(3), and you argue that because the request essentially seeks the district attorney's entire criminal case file, the information is excepted from disclosure in its entirety under section 552.108(a)(3) and (b)(3) in conjunction with the holding in *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994) (discovery request for district attorney's entire litigation file may be denied because the decision of what to include in the file necessarily reveals the prosecutor's mental impressions or legal reasoning). In this instance, we agree that the request essentially seeks the prosecutor's entire case file for a specified case that has evidently concluded. *Curry* thus provides that the release of the information would reveal the prosecutor's mental impressions or legal reasoning. Accordingly, except as noted below, you may withhold the remaining information pursuant to section 552.108(a)(3)(B) and (b)(3)(B) of the Government Code.

We note that 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). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). In Open Records Decision No. 127 (1976), this office summarized the types of information made public pursuant to *Houston Chronicle*. See Open Records Decision No. 127 at 4 (1976). The county must

release to the requestor this information, whether or not the information is found on the front page of an offense report.

In summary, you must withhold the information in the EMS records, except that information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of the patient is subject to release. You must withhold in their entirety the records of the treatment of a patient by a physician. You may withhold the remaining documents, except for the basic information which must be released, pursuant to section 552.108.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

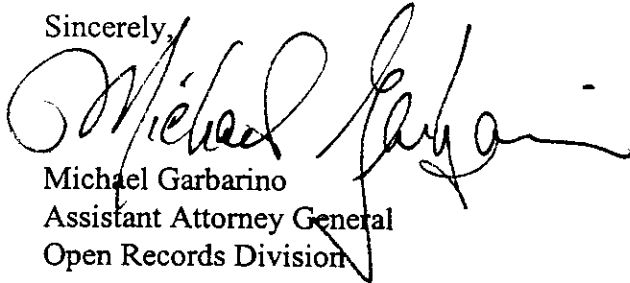
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is written in a cursive style and is positioned above the typed name and title.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/pr

Ref: ID#140056

Encl. Submitted documents

cc: Mr. Rick Kennon  
Wright & Greenhill, P.C.  
P.O. Box 2166  
Austin, Texas 78768  
(w/o enclosures)