



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 14, 2022

Ms. Charla Thomas  
Assistant City Attorney  
City of Temple  
2 North Main Street, Suite 308  
Temple, Texas 76501

OR2022-28080

Dear Ms. Thomas:

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# 972428 (ORR# 22-1862 and 22-2022).

The City of Temple (the "city") received two requests from different requestors for information pertaining to a specified incident. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the city received the two requests for information in close temporal proximity. The city seeks to withhold information from the first requestor under section 552.108 of the Government Code, but not from the second requestor. Thus, we assume the city will release the information at issue to the second requestor. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Section 552.108 is a discretionary exception and does not make information

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<sup>1</sup> We note the city did not comply with the requirements of section 552.301 of the Government Code in raising section 552.101. *See* Gov't Code § 552.301(b), (e). Nevertheless, section 552.101 can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301.

confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, the city may not withhold information from one requestor under section 552.108 that it has released to the other requestor. Accordingly, with respect to the information the city releases to either requestor, the city may not withhold such information from the other requestor under section 552.108 of the Government Code. However, because section 552.101 of the Government Code can make information confidential, we will address the applicability of this section to the information at issue.

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 section 773.091 of the Health and Safety Code, which provides, in part, the following:

(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). We agree the information that the city has marked under section 773.091 consists of the records of the identity, evaluation, or treatment of a patient made and maintained by emergency medical services personnel. Thus, section 773.091 is applicable to this information. Therefore, with the exception of the information subject to section 773.091(g) of the Health and Safety Code, which is not confidential under section 773.091, the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The city must release the remaining information, including the information subject to section 773.091(g) 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 <https://www.texasattorneygeneral.gov/open->

[government/members-public/what-expect-after-ruling-issued](#) or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jm

Ref: ID# 972428

Enc. Submitted documents

c: Requestor  
(w/o enclosures)