



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 21, 1997

Mr. Stephen R. Alcorn  
Assistant City Attorney  
City of Grand Prairie  
P.O. Box 534045  
Grand Prairie, Texas 75053-4045

OR97-0107

Dear Mr. Alcorn:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103029.

The City of Grand Prairie (the "city") received three requests for information concerning two named police officers. You have submitted to this office the named officers' personnel files. You assert that the information at issue is confidential pursuant to section 143.089 of the Local Government Code. You also discuss ongoing litigation and a filing of a notice of claim concerning the shooting death of an individual. Thus, we assume that you are also asserting section 552.103 of the Government Code for records that are responsive to the request. *See* Open Records Decision No. 638 (1996) at 4 (governmental body must timely provide information about changes in circumstances of anticipated litigation)

Section 143.089 of the Local Government Code provides for the maintenance of a police civil service file and what may be kept in that file:

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and

if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Information that section 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in a police department's internal file, as provided in section 143.089(g):

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. You have not marked any of the documents as being section 143.089(g) records. However, if any of the records at issue are section 143.089(g) documents from the police department's internal file, these records are confidential and may not be released.

No such confidentiality provision governs information that is maintained in the civil service personnel files pursuant to section 143.089. Information maintained in the civil service personnel files must generally be released to the public upon request, unless some provision of chapter 552 of the Government Code permits the civil service commission to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 (1990) at 6 (construction of Local Gov't Code § 143.089(f) provision requiring release of information as required by law). We will address the applicability of section 552.103(a) to the civil service personnel records at issue.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have demonstrated that litigation involving the city is reasonably anticipated, and our review indicates that the records at issue are related to that anticipated litigation. Thus, the civil service records at issue may generally may be withheld from disclosure pursuant to section 552.103(a).<sup>1</sup>

However, some of the civil service records are also medical records, access to which is governed by provisions of the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, rather than section 552.103(a) of the Government Code. Section 5.08(b) and (c) of article 4495b provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) requires that any subsequent release of

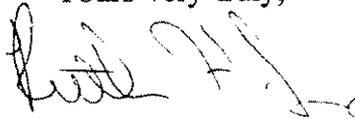
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<sup>1</sup>We note that the city has the discretion to release any of the non-confidential information at issue. We also note that the applicability of section 552.103(a) generally ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

medical records be consistent with the purposes for which the district obtained the records. Open Records Decision No. 565 (1990) at 7. Thus, we conclude that access to the submitted medical records is not governed by section 552.103(a) of the Government Code, but rather provisions of the MPA. Open Records Decision No. 598 (1991).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 103029

Enclosures: Submitted documents

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