



October 8, 1999

Ms. J. Middlebrooks  
Assistant City Attorney  
City of Dallas  
2014 Main Street, Room 206  
Dallas, Texas 75201

OR99-2890

Dear Ms. Middlebrooks:

You have asked 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# 127919.

The City of Dallas Police Department (the “department”) received a request for “the personnel records of two Dallas police officers . . . include a list of all commendations and complaints—sustained or not—received by the two officers during their careers.” In response to the request, you submit to this office for review the records at issue consisting of four pages, and state that “[a]ll other public information will be released to the requestor.” You assert that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception and arguments you have raised and reviewed the submitted information.

Based on the department’s brief to this office, we understand that all public information will be released to the requestor. We must, however, note that the submitted records do not include the type of information typically found in personnel records, such as employment applications, employment histories, academic information, personal family information, and employment benefit and deduction information. Although most of public employees’ personnel records are open to the public, some information is generally excepted from required disclosure based on privacy or a provision at law.<sup>1</sup> See Gov’t Code §§ 552.101 (personal and financial information), 552.117 (peace officer’s information), 552.130 (release and use of information obtained from motor vehicle records), 552.301, 552.352 (distribution of confidential information is a criminal offense); see generally Open Records Decision Nos.

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<sup>1</sup>There is a legitimate public interest in the work behavior of a public employee and how he or she performs job functions. Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 444 (1986) (employee information about qualifications, disciplinary action and background not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow).

470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Since you have not submitted any other responsive records and assert that public information will be released, we will only address the applicability of the Public Information Act's provision to the four submitted pages.

We now consider whether the marked information within Exhibit A must be withheld under section 552.101 in conjunction the section 5.08 of the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, which provides in part:

(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)(3) requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, access to the medical records at issue is not governed by chapter 552 of the Government Code, but rather provisions of the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and *information obtained from those medical records*. See V.T.C.S. art. 4495b § 5.08(a), (b), (c), (j); Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. Certain portions of the submitted documents include medical record information, access to which is governed by provisions outside the Public Information Act. *Id.* Thus, unless the access provisions of the MPA provide for release of the records, both the medical records and the information in other records that was obtained from the medical records, are confidential.<sup>2</sup>

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<sup>2</sup>You also ask whether section 552.101 is applicable to the submitted records, since the information "is part of the court file." Generally, information that has been filed with a court, is part of the public record and must be released. See *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding). However, to the extent the submitted information consists of medical records, the MPA provisions control access to the medical records.

Since you have not raised an applicable exception for the remaining information, we assume that you will release the responsive information. 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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 127919

Encl. Submitted documents

cc: Ms. Ann Zimmerman  
Staff Writer  
*The Dallas Observer*  
2130 Commerce Street  
Dallas, Texas 75201  
(w/o enclosures)