



November 9, 1999

Mr. John Schneider, Jr.
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501-0672

OR99-3176

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128660.

The City of Pasadena (the "city") received a request for, among other things, the following information:

Reports from the most recent five years detailing all drug and alcohol testing conducted by the city on city employees. Specifically we are looking for the number of tests conducted, the results of the tests, breakdown of results by city department and any other readily available information obtained from this testing.

You have submitted to this office as responsive to the request a representative sample of the following types of documents: a list of police officers scheduled for drug testing on a particular day, charts that chronicle the dates that police department employees have been tested (arranged both chronologically and alphabetically), and individual laboratory test results. You describe the city's drug testing procedure as follows:

Generally speaking, under the city's drug testing procedures employees are selected for testing by a random number generator which, as the name implies, randomly selects an employee to be tested. The

employee is then sent to Concentra Inc., a drug testing facility, under the direction of a medical doctor, which takes a urine specimen from the employee which urine specimen is then sent to a laboratory in a different state (other than Texas) for analysis. The results are then reviewed by a medical doctor. This laboratory then reports the results to Concentra Inc., which then provides the results to the City.

You contend that the requested information is excepted from required public disclosure pursuant to section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas Medical Practice Act (the "MPA"), V.T.C.S. article 4495b provides:

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.

V.T.C.S. art. 4495b, § 5.08(b). Because you represent that the requested drug test results were prepared by or under the supervision of a physician, we conclude that many of the documents at issue are records created or maintained by a physician or someone under a physician's supervision and are thus confidential under section 5.08 of article 4495b. *See* Open Records Decision No. 546 (1990). Further, to the extent that the other records at issue contain information directly derived from those medical records, that information is also made confidential section 5.08.¹

Section 5.08(j)(3) of article 4495b 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). Thus, the city may release the laboratory test results and any information directly derived from those reports only in accordance with the MPA.² Open Records Decision Nos. 598 (1991), 546 (1990); *see* V.T.C.S. art. 4495b, §§ 5.08 (c), (j), (k).

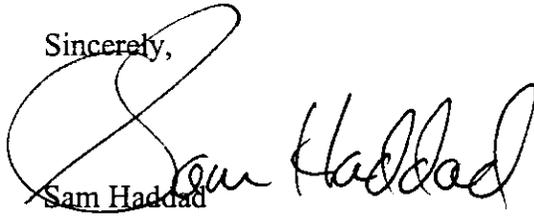
¹Because no such records are at issue, this office does not address here whether records of disciplinary actions taken as a result of positive test result are excepted from required public disclosure.

²Because we resolve this aspect of your request under the provisions of the MPA, we do not address your other arguments against public disclosure.

However, the remaining information at issue does not fall within the purview of the MPA. Consequently, the city must release the names of all police employees who have submitted to drug testing and the dates of those tests.

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/RWP/nc

Ref: ID# 128660

Encl. Submitted documents

cc: Mr. Tony Kovaleski
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