



June 4, 2002

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2002-3009

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163814.

The City of Houston (the "city") received a request for "all records related to any Internal Affairs complaint history, including dispositions, personnel records, photos, and any other information" regarding twelve named Houston Police Department (the "department") officers and a dispatcher. You indicate that a portion of the information you have submitted to this office as responsive has been or will be released to the requestor, but claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. We understand that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the police department is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g).

In cases in which a police department takes disciplinary action against a police officer under chapter 143, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the officer's civil service file maintained under section 143.089(a). Chapter 143 prescribes the following types of disciplinary actions:

removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055. Such records are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Further, we note that a written reprimand is not a disciplinary action prescribed by chapter 143. *See* Attorney General Opinion No. JC-0257 at 8 (2000) (written reprimand may not be placed in public, civil service personnel file; department's confidential file, maintained under section 143.089(g), is appropriate repository for written reprimand). Information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.--San Antonio 2000, pet. filed); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

You explain that the submitted information contains records of an internal investigation located in department files created under section 143.089(g). You state that the investigation initially found that nine department officers and one civilian employee had committed violations of department policy and that discipline of said personnel was requested. You inform us that records related to the discipline of the civilian employee have been released to the requestor. You state, however, that discipline against seven out of the nine officers was overturned on appeal. With regard to the two officers whose disciplinary action was not overturned on appeal, we note, upon review of the submitted information, that these two officers received written reprimands. Thus, based on your statements and our review of the submitted information, we agree that the submitted information is confidential under section 143.089(g) of the Local Government Code to the extent the information is maintained solely in the department's personnel files.¹

We note, however, that the information submitted does not relate solely to an internal affairs investigation, in that the police department also conducted a criminal investigation of the incident. Confidentiality under section 143.089(g) may not be engrafted onto information that is created for other law enforcement purposes and does not relate solely to the officer's employment relationship. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d at 564-65. Therefore, to the extent that the submitted information relates to the criminal investigation, we address the city's claim that this information is excepted from disclosure under section 552.108 of the Government Code.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to

¹Based on this finding, we need not reach your argument that the submitted information is also confidential under sections 143.1214(b) and 143.1214(c) of the Local Government Code.

a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that “[t]he investigation also contains criminal investigations that did not result in conviction or deferred adjudication.” Therefore, we agree that section 552.108(a)(2) is applicable to the information pertaining to the criminal investigations.

However, section 552.108 is inapplicable to 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 Co. 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold the submitted information relating to the criminal investigations based on section 552.108(a)(2).

We note that included among the documents you seek to withhold are accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). Section 550.065(b) states that, except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the city with two of the three pieces of information. Thus, you must withhold the accident reports under section 550.065(b).

Finally, we note that the submitted information contains medical records, access to which is governed by the Medical Practice Act (the “MPA”), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(b) 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.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is 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.

We have marked the information that is governed by the MPA. *See* Open Records Decision Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under

supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). As the patient is deceased, the medical records may be released only on the signed consent of the deceased's personal representative. Occ. Code §§ 159.005(a)(5). That consent must specify (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. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990).

To summarize, the submitted information that pertains to the internal affairs investigation is confidential under section 143.089(g) of the Local Government Code, and must be withheld under section 552.101 of the Government Code. The submitted information that relates to the criminal investigation is excepted from disclosure under section 552.108(a)(2) of the Government Code. The city must release basic information, however, under section 552.108(c). Accident reports must be withheld under section 552.101 in conjunction with section 550.065(b) of the Transportation Code. Medical records may only be released in accordance with the MPA. In light of our conclusions, we need not address your argument under section 552.130.

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 Hadassah Schloss at the Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 163814

Enc. Submitted documents

c: Ms. Susan Hartnett
3600 Jeanetta #2708
Houston, Texas 77063
(w/o enclosures)