



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 10, 2003

Sergeant Thomas P. Karlock
Galveston Police Department
P.O. Box 568
Galveston, Texas 77553

OR2003-8094

Dear Sgt. Karlock:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190906.

The City of Galveston Police Department (the "department") received a request for the complete personnel file, including complaint and disciplinary history of four named officers and the complete administrative investigation file pertaining to a particular complaint. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information, some of which is a representative sample.¹

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 of Galveston (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 civil service director 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 investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or in possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under chapter 552 of the Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information 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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).²

In this instance, you tell us that some of the requested information is maintained in the police department's internal file pursuant to section 143.089(g). You tell us that some of the requested information is maintained in the city's civil service file pursuant to section 143.089(a). The information that you have labeled as part of the department's internal file is confidential and cannot be released. The remaining information, which you have labeled as part of the civil service director's file is subject to disclosure. However, information that is subject to public disclosure may still be excepted from disclosure under the exceptions in chapter 552 of the Government Code. We now turn to whether the remaining information is excepted from disclosure.

We note that you appear to have redacted from the documents you have labeled under section 143.089(a) information concerning licensed peace officers pursuant to a previous determination issued by this office. *See* Open Records Decision No. 670 (2001) (providing that governmental bodies may withhold under section 552.117 without requesting decision from this office, home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether individual has family members, of any individual who meets definition of “peace officer”); *see also* Open Records Decision No. 673 (2001) (criteria of previous determination regarding specific categories of information). We note that we have marked additional information that you must withhold on this basis. However, we note that employee numbers and city identification numbers are not the type of information protected by section 552.117 and therefore may not be withheld on the basis of Open Records Decision No. 670.

² We note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

We note that the remaining information contains a medical record, 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.

This office has concluded that the protection afforded by section 159.002 extends only to records either created by a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). The MPA 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). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the medical records that appear in the remaining documents. These documents are confidential under the MPA and may be released only in accordance therewith.

We note that the remaining information contains a mental health record, which is protected under section 611.002 of the Health and Safety Code. Chapter 611 of the Health and Safety Code provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) provides: Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential. Health & Safety Code § 611.002. Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See* Health and Safety Code § 611.001. Sections 611.004 and 611.0045 provide for access to mental health records only for certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the mental health record that may only be disclosed as provided by the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code.

The remaining information also contains Forms I-9. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also*

8 C.F.R. § 274a.2(b)(4). The release of the submitted Forms I-9 in response to this request for information would be “for purposes other than for enforcement” of the referenced federal statutes. A Form I-9 may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, the department must withhold the submitted Forms I-9, which we have marked, under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

The remaining information contains an L-2 Medical Report required by the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”) that are confidential pursuant to section 1701.306 of the Occupations Code. Section 1701.306 provides as follows:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306. The department must withhold the L-2 form pursuant to section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

To the extent the driver's license numbers we have marked in the information were issued by the State of Texas, they must be withheld under section 552.130.

In summary, you must withhold the information that you have labeled under section 143.089(g). You must withhold the information that you have redacted along with the additional information we have marked pursuant to Open Records Decision No. 670. We have marked a document that may only be released in accordance with the MPA and a mental health record that may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. We have marked Forms I-9 that must be withheld under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. We have marked an L-2 form that must be withheld under section 552.101 in conjunction with 1701.306 of the Occupations Code. Finally, to the extent the driver's license numbers we have marked were issued by the State of Texas, they must be withheld under section 552.130. You must release the remaining information to the requestor.³

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

³ We note that you have redacted certain portions of the information that must be released. However, you have not explained why this information is excepted and we are not aware of any law that makes this information confidential. Therefore, to the extent the redacted information is not excepted from disclosure pursuant to Open Records Decision No. 670, it must be released with the remaining information.

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 Dep't of Pub. 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 190906

Enc: Submitted documents

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(w/o enclosures)