



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 5, 2007

Mr. Rashaad V. Gambrell  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2007-07003

Dear Mr. Gambrell:

You ask 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# 281333.

The City of Houston (the "city") received two requests for records of an investigation relating to the provision of emergency medical services to the requestor. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the submitted information includes the agenda for a city council meeting. The agenda of a public meeting of a governmental body is made public by section 551.041 of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code § 551.041 (governmental body shall give written notice of date, hour, place, and subject of each meeting held by governmental body). As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the agenda that we have marked must be released to the requestor.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make

confidential. In this instance, the submitted information includes medical records whose public availability is governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

(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.

Occ. Code § 159.002(b)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). We also have concluded that when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked the submitted medical records that are confidential under the MPA. As the patient who is the subject of those records, the requestor may have a right of access to them under the MPA. The city must withhold the marked medical records under the MPA unless it receives written consent for the release of those records that complies with sections 159.004 and 159.005 of the MPA.

The submitted information also includes records of the provision of emergency medical services ("EMS") that are confidential under section 773.091 of the Emergency Medical Services Act (the "EMS Act"), chapter 773 of the Health and Safety Code. Section 773.091 provides in part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(a)-(c). Section 773.091 further provides, however, that

[t]he privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

*Id.* § 773.091(g). We have marked the submitted EMS records that are confidential under section 773.091. As the patient, the requestor may also have a right of access to the EMS records. Information that is confidential under section 773.091 may be released to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf." *Id.* § 773.092(e)(4). The consent must be written and signed by the patient or the patient's authorized representative and must specify (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* § 773.093(a). Thus, the city must withhold the marked EMS records under section 773.091 of the EMS Act, except as specified by section 773.091(g), unless the city receives written consent for release of those records that complies with section 773.093 of the EMS Act.

The city seeks to withhold the rest of the submitted information, including any information encompassed by section 773.091(g) of the EMS Act that is not otherwise subject to release under sections 773.092 and 773.093, on the basis of section 143.1214 of the Local Government Code.<sup>1</sup> Section 143.1214 provides in part:

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department's use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

(1) to another law enforcement agency or fire department;

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<sup>1</sup>We understand that the city is a civil service municipality under chapter 143 of the Local Government Code.

(2) to the office of a district or United States attorney; or

(3) in accordance with Subsection (c).

(c) The department head or the department head's designee may forward a document that relates to a disciplinary action against a fire fighter or police officer to the [civil service] director or the director's designee for inclusion in the fire fighter's or police officer's personnel file maintained under Sections 143.089(a)-(f) [of the Local Government Code] only if:

(1) disciplinary action was actually taken against the fire fighter or police officer;

(2) the document shows the disciplinary action taken; and

(3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

Local Gov't Code § 143.1214(b)-(c). You inform us that the remaining information consists of records of an internal investigation of alleged misconduct on the part of two city fire fighters. You also inform us that disciplinary action was taken against the fire fighters at the conclusion of the investigation. You state that the Houston Fire Department (the "department") forwarded investigative documents that meet the requirements of section 143.1214(c) to the appropriate officer's personnel file maintained under section 143.089(a) of the Local Government Code. You also state that the requestor will be directed to the city's human resources department for responsive information that is available to the requestor. You contend, however, that the rest of the submitted information does not meet the conditions specified by section 143.1214(c) for inclusion in the fire fighters' civil service personnel files. Thus, you indicate that the remaining information is maintained by the department in departmental files and is not part of the fire fighters' civil service personnel files. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(f). Based on your representations and our review of the information at issue, we conclude that the city must withhold the rest of the submitted information, including any information encompassed by section 773.091(g) of the EMS Act that is not otherwise subject to release under sections 773.092 and 773.093 of the EMS Act, under section 143.1214 of the Local Government Code. *See* Open Records Decision No. 642 (1996) (concluding that files relating to investigations of Houston Fire Department personnel by Public Integrity Review Group of Houston Police Department were confidential under section 143.1214).

In summary: (1) the marked agenda is made public by section 551.041 of the Government Code and must be released; (2) the city must withhold the marked medical records under the MPA unless it receives written consent for the release of those records that complies with sections 159.004 and 159.005 of the MPA; (3) the city must withhold the marked EMS

records under section 773.091 of the EMS Act, except as specified by section 773.091(g), unless the city receives written consent for release of those records that complies with section 773.093 of the EMS Act; and (4) the city must withhold the rest of the submitted information, including any information encompassed by section 773.091(g) of the EMS Act that is not otherwise subject to release under sections 773.092 and 773.093 of the EMS Act, under section 143.1214 of the Local Government Code.<sup>2</sup>

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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

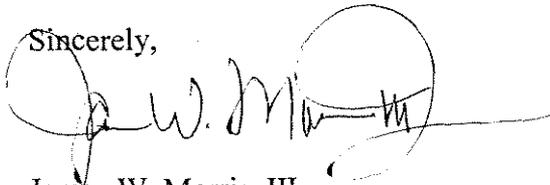
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<sup>2</sup>As we are able to make these determinations, we need not address your remaining argument against disclosure.

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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 281333

Enc: Submitted documents

c: Mr. Robert Gallant  
643 Regal  
Houston, Texas 77034  
(w/o enclosures)