



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2009

Ms. YuShan Chang
Ms. Evelyn Njuguna
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-05111

Dear Ms. Chang and Ms. Njuguna:

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# 340455.

The Houston Police Department (the "department") received three requests from two different requestors for information relating to a specified incident. You state that an incident report has been or will be released. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

Initially, we note that a portion of the information, which we have marked, is not responsive to the instant request for information because it was created after the request for information was received. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information, which we have marked as non-responsive, in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

¹We note that although you raise section 552.108 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information.

²To the extent any additional responsive information existed on the date the department received these requests, we assume you have released it. If you have not released any such records, you must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000)* (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, including section 143.1214 of the Local Government Code. The City of Houston is a civil service city under chapter 143 of the Local Government Code. Section 143.1214 of the Local Government Code provides in relevant 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;
- (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 disciplinary action against a fire fighter or police officer to the 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) 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 state that the submitted information consists of an internal investigation of alleged misconduct by a Houston police officer and that the investigation is still pending. You also state that the information is maintained in the department’s investigatory files and that the requestors are not another law enforcement agency or fire department or the office of a district or United States attorney. Further, you state that the information does not contain any documents that meet the requirements of section 143.1214(c) for inclusion in the police officer’s civil service personnel file. *See id.* § 143.1214(c); *see also* Local Gov’t Code § 143.089(a)-(g). While we agree that information in an investigatory file of the department that relates to officer misconduct is generally confidential under section 143.1214, we note that the submitted information includes medical

and emergency medical services ("EMS") records involving the first requestor. We further note that some of the other submitted information may also be maintained separate and apart from the internal affairs investigation. You indicate the department conducted a criminal investigation into the specified incident. Thus, this information is also maintained independently, separate and apart from the department's personnel files. The present requests do not specifically seek information from the police officer's department personnel file or the department's internal investigation. Instead, the requests seek information pertaining to a specified incident. Because the requestors ask for information about the incident in general, any copy of the investigatory materials that the department maintains for law enforcement purposes are responsive. The department may not engraft the confidentiality afforded to records under section 143.1214 to records that exist independently of the internal files. Accordingly, the information that is maintained solely in the department's internal investigative file is excepted from disclosure under section 552.101 in conjunction with section 143.1214 of the Local Government Code. However, the submitted information that is also maintained independently of the department's internal files, is not excepted from disclosure under section 552.101 in conjunction with section 143.1214 of the Local Government Code. We will therefore consider your remaining arguments against disclosure.

Medical records are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (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.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). 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) 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 medical records that are confidential under the MPA. These records may only be released in accordance with the MPA. *See* Open Records Decision No. 598 (1991).

The remaining information includes EMS records that are subject to chapter 773 of the Health and Safety Code. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. *See* ORD 598. Section 773.091 provides in pertinent 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(b)-(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 note, however, records that are confidential under section 773.091 may be disclosed to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information." *Id.* §§ 773.092(e)(4), .093. Section 773.093 provides a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. Thus, the department must withhold the submitted EMS records under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g). However, the department must release the EMS records on receipt of proper consent under section 773.093(a). *See id.* §§ 773.092, .093.

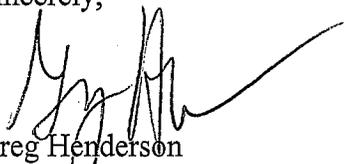
In summary, the department must withhold the information maintained solely in the department's internal investigative file pursuant to section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. The medical records

we have marked may only be released in accordance with the MPA. The department must withhold the marked EMS information under section 773.091 of the Health and Safety Code, unless the requestors provide the department with proper written consent.³

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/jb

Ref: ID#340455

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining argument against disclosure.