



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-12571

Dear Mr. Phillips:

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# 354384 (Fort Worth request no. 4180-09).

The City of Fort Worth (the "city") received a request for the requestor's personnel file. The requestor seeks either a summary of her involvement with the Internal Affairs Division of the city's police department or a letter stating there has been no such involvement. You claim the submitted 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.

Because the submitted information does not contain information regarding the requestor's involvement with the Internal Affairs Division, we assume that, to the extent this information existed at the time the request was received, it has been released to the requestor. If such information has not been released, then it must be released 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). In the alternative, the requestor seeks a letter stating her lack of involvement with the Internal Affairs Division. However, the Act does not require a governmental body to create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986).

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 section encompasses section 143.089 of the Local Government Code. The City of Fort Worth is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made the records confidential. *See id.* at 949; Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files). This confidentiality extends to any records maintained in the internal file that reasonably relate to the police officer's employment relationship. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied). While section 143.089(e) grants a police officer a right of access to information maintained in the officer's civil service file under subsection (a), there is no right of access to information maintained in the officer's internal file. *See* Local Gov't Code § 143.089(e); *see also* Open Records Decision No. 650 at 3 (1996) (confidentiality provision of section 143.089(g) contains no exceptions).

Upon review, we find that all submitted records relate to the requestor's employment relationship with the city. You explain the submitted records are maintained solely in the named officer's internal department file. You also state the documents pertaining to investigations of the requestor relate to investigations that did not result in any disciplinary action against her. Based on your representations and our review, we agree the submitted information is subject to section 143.089(g).

However, the requestor's personnel file includes some of her medical records. Medical records are 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:

- (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.

Occ. Code § 159.002(a)-(c). 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 id.* §§ 159.004, .005. As the subject of the submitted medical records, the requestor may obtain her records upon compliance with the release provisions. *See id.* §§ 159.004, .005. In this instance, however, the city seeks to withhold the medical records under section 143.089 of the Local Government Code. Thus, we must address the conflict between the requestor's right of access under the MPA and the confidentiality provided these records under section 143.089 of the Local Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute, unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See Gov't Code § 311.026* (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). The MPA is a more specific statute than section 143.089 because the MPA applies specifically to medical records while section 143.089 applies generally to all records in a personnel file. Additionally, section 143.089 of the Local Government Code was enacted prior to the MPA's release provision in section 159.004 of the Occupations Code. *See Occ. Code § 159.004, added by Act of May 17, 1999, 76th Leg., ch. 388, § 1* (effective Sept. 1, 1999), *amended by Act of May 25, 2001, 77th Leg., ch. 984, § 3* (effective June 15, 2001); *Loc. Gov't Code § 143.089, added by Act of March 1, 1989, 71st Leg., ch. 1, § 25(c)* (effective Aug. 28, 1989), *amended by Act of May 29, 1989, 71st Leg., ch. 1248, § 84* (effective Sept. 1, 1989). Therefore, the medical records we marked in the submitted information are subject to the MPA and may only be released to in accordance with its provisions. *See ORD 598.*

The submitted personnel records also contain the requestor's fingerprints. Fingerprints are governed by chapter 560 of the Government Code. Section 560.001(1) provides that "[b]iometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." *Gov't Code § 560.001(1)*. Under section 560.003 of the Government Code, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. Section 560.002 states, however, that "[a] governmental body that possesses a biometric identifier of an individual ... may not sell, lease, or otherwise disclose the biometric identifier to another person unless ... the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, the requestor has a right of access to her own fingerprints under section 560.002(1)(A). *See Open Records Decision No. 481 at 4* (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, we must address the conflict between the release provision of section 560.002 and the confidentiality provision of section 143.089 of the Local Government Code. As noted above, where information falls within both a general and a

specific statutory provision, the specific provision prevails over the general statute unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. We find section 560.002 is a more specific statute than section 143.089 because chapter 560 of the Government Code applies specifically biometric identifiers, while section 143.089 applies generally to all records in the departmental file. Additionally, section 143.089 of the Local Government Code was enacted prior to the section 560.002 of the Government Code. *See* Gov't Code § 560.002, *added by* Act of May 26, 2001, 77th Leg., ch. 634, § 2 (effective Sept. 1, 2001); *Loc. Gov't Code* § 143.089, *added by* Act of March 1, 1989, 71st Leg., ch. 1, § 25(c) (effective Aug. 28, 1989), *amended by* Act of May 29, 1989, 71st Leg., ch. 1248, § 84 (effective Sept. 1, 1989). Therefore, the fingerprints we marked in the submitted information are subject to the chapter 560 of the Government Code, and must be released to the requestor.

In summary, the medical records we marked may only be released in accordance with the MPA. The city must release the fingerprints we marked to the requestor under section 560.002 of the Government Code. The city must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.¹

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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

¹To the extent responsive information contained in this officer's civil service file exists, we presume it was released, as the requestor has a special right of access to this information. *See* Local Gov't Code § 143.089(a), (e).

Ref: ID# 354384

Enc. Submitted documents

cc: Requestor
(w/o enclosures)