



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 12, 2015

Mr. Renatto Garcia
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2015-04770

Dear Mr. Garcia:

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# 556169 (Department File Number: BA1v2).

The Corpus Christi Police Department (the "department") received a request for copies of excessive force complaints filed during a specified time period that are not pending, as well as the annual totals of excessive force reports generated during the specified time period, classified by weapon.¹ You state you will release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under

¹After receiving the request, the department sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See Gov't Code* § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You state the requestor accepted the charges on December 18, 2014. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

sections 552.101 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

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. Section 552.101 encompasses information deemed confidential by statute, such as section 143.089 of the Local Government Code. You state the City of Corpus Christi (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). Under section 143.089(a), the police officer’s civil service file must contain certain specified items, including commendations, periodic evaluations by the officer’s supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(3). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. We note a written reprimand is not a disciplinary action for purposes of section 143.089. *See* Attorney General Opinion JC-0257 (2000). In cases in which a police department investigates an officer’s misconduct and takes disciplinary action against an officer, it is required by section 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 officer’s civil service file maintained under section 143.089(a). *See Abbott v. 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 are in the possession of the department because of its investigation into an officer’s misconduct, and the department must forward them to the civil

²We note, and you acknowledge, the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov’t Code § 552.301(e)(1)(D) (requiring governmental body to submit within fifteen business days of receiving request copy of specific information governmental body seeks to withhold or representative samples if the information is voluminous). Nonetheless, sections 552.101, 552.102(a), 552.117, and 552.130 of the Government Code are mandatory exceptions to disclosure that can provide compelling reasons to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of these exceptions to the submitted information, notwithstanding the department’s failure to comply with section 552.301 in requesting a decision from this office.

³We assume 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 those records contain substantially different types of information than that submitted to this office.

service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Information relating to alleged misconduct or disciplinary action taken must be removed from the officer's civil service file if the department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(b)-(c).

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Id. § 143.089(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 section 143.089(g) made these records confidential. *See City of San Antonio*, 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting confidentiality under Local Gov't Code § 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (addressing functions of Local Gov't Code § 143.089(a) and (g) files). Information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *See City of San Antonio*, 851 S.W.2d at 949.

You state the information you have indicated is kept in the department's internal personnel files in accordance with section 143.089(g). You indicate no disciplinary action was taken with regard to these files. We therefore conclude the information you have indicated is

confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.⁴

You claim a portion of the remaining information, which you have indicated, is protected under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). Section 418.182(a) of the Government Code provides, in relevant part, “information . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.” Gov’t Code § 418.182(a). The fact that information may be related to a security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The information at issue consists of surveillance video recordings at the city’s detention center (the “center”). You state the surveillance video system is part of the center’s security system. You assert the recordings contain information that identifies the specifications, operating procedures, location, and vulnerabilities of the security system, including blind spots, camera ranges, picture clarity, image quality, angles, and zoom capacity. You further assert the release of the information at issue would compromise the center’s security and inhibit center personnel’s ability to maintain the location secure from terroristic acts and related criminal activity. Upon review, we find the information at issue relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep’t of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (recorded images of Texas Department of Public Safety video taken from Capitol security cameras relate to specifications of security system used to protect public property from act of terrorism or related criminal activity). Accordingly, the department must withhold the video recordings you have indicated under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.

Section 552.101 also encompasses information made confidential by the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs the release of

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant part, the following:

(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 records. *See id.* §§ 159.002, .004. 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 at 3-4 (1987), 370 at 2 (1983), 343 at 1 (1982). We have further found when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 at 1 (1990). Upon review, we find the information we have marked constitutes medical records. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find none of the remaining information consists of a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]”⁵ Gov’t Code § 552.102(a). The Texas Supreme Court held

⁵The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the department must withhold the dates of birth we have indicated in the submitted audio recordings under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.⁶ Gov't Code § 552.117(a)(2). Section 552.117 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). In this instance, we are unable to determine whether the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12. Thus, we must rule conditionally. To the extent the individuals at issue are currently licensed peace officers as defined by article 2.12, the department must withhold the information we have indicated in the submitted audio recordings under section 552.117(a)(2) of the Government Code; however, the department may only withhold cellular telephone numbers under section 552.117(a)(2) if the cellular telephone service was not paid for by a governmental body. To the extent the individuals at issue are not licensed peace officers as defined by article 2.12, the department may not withhold the information we have indicated under section 552.117(a)(2) of the Government Code.

If the individuals at issue are not licensed peace officers, their personal information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.024, .117(a)(1). As noted above, section 552.117 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* ORD 506 at 5-6. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individuals at issue timely

⁶Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

requested confidentiality under section 552.024, the department must withhold the information we have indicated in the submitted audio recordings under section 552.117(a)(1) of the Government Code; however, the department may only withhold cellular telephone numbers under section 552.117(a)(1) if the cellular telephone service was not paid for by a governmental body. To the extent the individuals at issue did not timely request confidentiality under section 552.024, the department may not withhold the information we have indicated under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Thus, the department must withhold the motor vehicle record information we have indicated in the remaining information under section 552.130 of the Government Code.

In summary, the department must withhold the information you have indicated under section 552.101 of the Government Code in conjunction with (1) section 143.089(g) of the Local Government Code, and (2) section 418.182 of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The department must withhold the dates of birth we have indicated in the submitted audio recordings under section 552.102(a) of the Government Code. To the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the department must withhold the information we have indicated in the submitted audio recordings under section 552.117(a)(2) of the Government Code. If the individuals whose information is at issue are not currently licensed peace officers, then to the extent the individuals made timely elections under section 552.024 of the Government Code, the department must withhold the information we have indicated in the submitted audio recordings under section 552.117(a)(1) of the Government Code. However, the department may only withhold cellular telephone numbers under section 552.117(a)(1) of the Government Code or section 552.117(a)(2) of the Government Code if the cellular telephone service was not paid for by a governmental body. The department must withhold the motor vehicle record information we have indicated in the remaining information under section 552.130 of the Government Code. The remaining information must be released.

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.texasattorneygeneral.gov/open/>

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 556169

Enc. Submitted documents

c: Requestor
(w/o enclosures)