



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 28, 1994

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR94-758

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29835.

The Houston Police Department (the "department") received an open records request for "any internal affairs investigations/reports involving" a particular department employee for the time period of January 1989 to October 1994. You state that you have released to the requestor most of the requested records. You seek to withhold certain other records pursuant to sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas Medical Practice Act, V.T.C.S. article 4495b provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). Although we generally agree that most of the records you have identified as medical records must be withheld pursuant to article 4495b, we note that some of these records do not reflect the "identity, diagnosis, evaluation, or treatment

of a patient" and therefore do not constitute "medical records" for purposes of article 4495b. For example, Exhibit C-2 contains a police officer's authorization to receive unspecified medical services from a hospital. These and other records that were not prepared by a physician do not meet the description of records made confidential by section 5.08(b) of article 4495b. We have marked the "medical" documents that are not protected by article 4495b and thus must be released to the requestor.

You also contend that certain individuals' criminal history record information ("CHRI") contained in the requested files must be withheld pursuant to section 552.101. We agree. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). In addition, sections 411.085 and 411.087(a) of the Government Code prohibit the department from disclosing any CHRI obtained from the Department of Public Safety or any other criminal justice agency. Accordingly, pursuant to state law and federal regulations, the department may not release to the requestor any information obtained from a criminal justice agency that would tend to reveal individuals' criminal backgrounds.

Section 552.101 also excepts information coming within the protection of common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. We agree that the information you have marked in Exhibit D-1 meets this test and accordingly must be withheld.

Finally, you seek to withhold two interrelated internal investigation files in their entirety pursuant to the "law enforcement" exception, section 552.108 of the Government Code. When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). One of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. See Open Records Decision Nos. 133, 127 (1976). Whether disclosure of particular records will unduly interfere with law enforcement efforts must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981).

In an affidavit that you have submitted to this office, a departmental employee attests:

This investigation is in an early stage and will require a compilation of reports concerning physical evidence and witness statements. It will also entail an extensive review of applicable state and federal laws and department rules and policies as well as review by the Harris County District Attorney's Office. This is considered an active investigation that could potentially result in the filing of criminal charges. The release of any part of the investigation findings could seriously impair further investigation (e.g. a release of findings could lead to the destruction of evidence or the intimidation of witnesses) and would interfere with the law enforcement objectives of the investigation.

Given this representation, this office agrees that the department may withhold at this time the two internal affairs files numbered 94-1242 and 94-1251 in their entirety pursuant to section 552.108.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/RWP/rho

Ref.: ID# 29835

Enclosures: Marked documents

cc: Ms. Deborah Q. Hensel and
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(w/o enclosures)