



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1995

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-256

Dear Ms. Nguyen:

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# 30836.

The City of Houston (the "city") received a request for information relating to a civil claim brought against the city by a certain individual. You have submitted for review documents identified as Exhibits 3 through 6. You contend the documents are excepted from required public disclosure.

Exhibit 3 is an interagency letter from an assistant city attorney to the city attorney. You contend this letter is excepted from required public disclosure as attorney work product citing *Owens-Corning Fiberglass Corp. v. Caldwell*, 818 S.W.2d 749 (Tex. 1991). Work product is properly raised under section 552.103. Open Records Decision No. 429 (1985). Therefore, section 552.103 must apply before this office will consider work product claims. Open Records Decision No. 574 (1990). As you have not raised section 552.103, you may not withhold Exhibit 3.

Exhibit 4 consists of psychological records prepared by a physician. You contend that this information is excepted from required public disclosure under section 552.101 of the Government Code. We agree. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Medical Practice Act, article 4495b, § 5.08(b), V.T.C.S., governs access to medical

records created by a physician.. Accordingly, the city may release Exhibit 4 only as provided in the Medical Practice Act.

Exhibit 5 is a police department information report. You contend that this report is excepted from required public disclosure under the privacy aspect of section 552.101 of the Government Code. To be excepted from disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

We have reviewed Exhibit 5 and agree it contains information that is highly intimate and embarrassing and of no legitimate interest to the public. For your convenience, we have marked the information that may be withheld under common-law privacy. The remaining information in Exhibit 5 must be released.

Exhibit 6 consists of an internal affairs investigation arising from a complaint against two police officers. You claim that this exhibit is excepted from required public disclosure under section 552.101 as confidential by law. You assert section 552.101 in conjunction with section 143.089(g) of the Local Government Code. Section 143.089(g) provides:

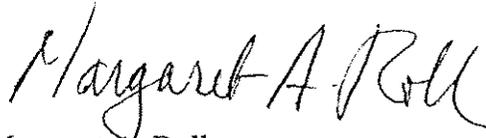
A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter 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.

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 a city police department for its use and addressed the applicability of section 143.089(g) thereto. The records included in the 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 these records confidential. *City of San Antonio*, 851 S.W.2d at 949.

You state that "the complaint against the two police officers was found unsustainable, and no disciplinary action was taken against them." Accordingly, the department must withhold Exhibit 6 pursuant to section 143.089(g) of the Local Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/LBC/rho

Ref: ID# 30836

Enclosures: Marked documents

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(w/o enclosures)