



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 4, 1998

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

OR98-1120

Dear Ms. Calabrese:

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# 114341.

The City of Houston (the "city") received a request for "a complete copy of the original file . . . [and] photographs," from two attorney's concerning their client's complaint referenced by complaint number 96-1985. In response to the request, you submitted to this office for review a copy of the records which you assert are responsive. You contend that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the claimed exceptions and have reviewed the information submitted.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Chapter 143 of the Local Government Code sets forth civil service rules for municipal fire and police departments. Subchapter G of that chapter sets forth provisions applicable to municipalities with a population of 1.5 million or more, including the City of Houston. *See* Open Records Decision No. 642 (1990).<sup>1</sup>

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<sup>1</sup>We also note that in Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Local Gov't Code § 143.089(a), (g).

Section 143.1214(b) of the Local Government Code requires “the department” to withhold from disclosure “an investigatory document that relates to a disciplinary action against a . . . police officer that was overturned on appeal” and “any document in the possession of the department that relates to a charge of misconduct against a . . . police officer that the department did not sustain.” A review of the submitted information indicates that the records at issue are from the personnel files held by the city police department and that the records pertain to a complaint which did not result in disciplinary action as contemplated by chapter 143 of the Local Government Code. Therefore, as these complaint charges were not sustained by the department, the city must withhold the requested information from disclosure under section 552.101 in conjunction with section 143.1214(b) of the Local Government Code.

Additionally, we note that some of the documents you submitted are medical records, access to which is governed by the Medical Practice Act (the “MPA”), article 4495b of Vernon’s Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

(b) 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.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are 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.

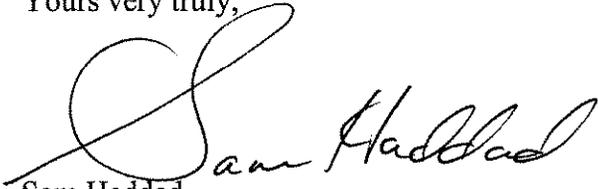
Section 5.08(j)(1) provides for release of medical records upon the patient’s written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which the city police department obtained the records. Open Records Decision No. 565 (1990) at 7. You state that “unless [the requestors] provide[] the City with a release for medical records from [their client], the City believes the medical records,” are confidential. We agree. Medical records may be released only as provided under the MPA.

Finally, we note that Federal regulations prohibit the release of criminal history record information (“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.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, if you have CHRI in your possession and it falls within the ambit of these state and federal regulations, you must withhold the CHRI from the requestor.

As we resolve your request under section 552.101, we need not address your claimed exception under section 552.103 at this time. 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 114341

Enclosures: Submitted information

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