



March 29, 2000

Mr. Monty Wade Sullivan
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-1216

Dear Mr. Sullivan:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 133527.

The City of Houston (the "city") received a request for the names of five police officers who were involved in an alleged excessive force incident. You have submitted information that the city believes to be responsive to the request. You claim that the submitted information is exempted from public disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Initially we consider whether disclosure of the submitted medical records is governed by the Medical Practice Act.¹ *See* Open Records Decision No. 598 (1991) (in governing access to specific subset of information, Medical Practice Act governs over more general provisions of the Public Information Act). The Medical Practice Act provides in relevant part that "[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." Occupations Code § 159.002(b) (emphasis added). None of the circumstances under which the Medical Practice Act

¹The Seventy-sixth Legislature repealed the former Medical Practice Act, article 4495b of Vernon's Texas Civil Statutes, in enacting the new Occupations Code. *See* Act of May 13, 1999, 76th Leg., R.S., ch. 388, § 6, 1999 Tex. Sess. Law Serv. 1431, 2439 (Vernon) (adopting Occupations Code). The codification of the former law was a non-substantive revision. *See id.* at § 7, 1999 Tex. Sess. Law Serv. at 2440. The former article 4495b now is codified as the Medical Practice Act at subtitle B of title 3 of the Occupations Code, and the former section 5.08 of article 4495b is codified as chapter 159 of the Occupations Code.

would permit the release of the submitted medical records appears to be applicable here. See Occupations Code §§ 159.002(c), 159.004, 159.005. Consequently, the records that we have marked are protected from disclosure under the Medical Practice Act and must not be released.

You also inform this office that the submitted information represents a confidential investigation report of the Internal Affairs Division (“IAD”) of the Houston Police Department. As the report appears to pertain to a completed investigation, section 552.022 of the Government Code is relevant to whether the report is subject to public disclosure. Section 552.022 provides in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under [chapter 552 of the Government Code] unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov’t Code § 552.022(a)(1). Thus, pursuant to section 552.022(a)(1), the IAD investigation report is subject to required public disclosure under chapter 552 of the Government Code unless other law expressly provides that it is confidential.

In this instance, you claim that the IAD investigation report is confidential under section 552.101 of the Government Code in conjunction with sections 143.089 and 143.1214 of the Local Government Code.² Chapter 143 of the Local Government Code encompasses civil service rules for municipal fire and police departments. Subchapter G of chapter 143 is applicable to a municipality with a population of 1.5 million or more, including the City of Houston. Subchapter G includes section 143.1214 of the Local Government Code, which provides in relevant part:

(b) The [police] department shall maintain an investigatory document that relates to a disciplinary action against a . . . police officer that was overturned on appeal, or 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, only in a file created by the department for the department’s use. The department may not release those documents to any agency or other person except another law enforcement agency[.]

²Section 552.101 excepts from disclosure information that is considered to be confidential by law, including a statute. As a general rule, statutory confidentiality under section 552.101 requires express language making certain information confidential or stating that information shall not be released to the public. See Open Records Decision No. 478 at 2 (1987).

Local Gov't Code § 143.1214(b). You inform this office that the IAD investigated the conduct of three of the five officers accused of using excessive force, and that none of the complainant's investigations was sustained. Based on your representations and our review of the IAD report, we conclude that it is confidential under section 143.1214 of the Local Government Code and therefore not subject to release under section 552.022(a) of the Government Code. *See also* Open Records Decision No. 642 (1996) (applying section 143.1214 to files relating to investigations of City of Houston Fire Department personnel by Public Integrity Review Group).³

In summary, the submitted medical records are confidential under the Medical Practice Act, subtitle B of title 3 of the Occupations Code, and the balance of the IAD investigation report is confidential under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. Therefore, the city must withhold the submitted information from disclosure.⁴ This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

³We note that the submitted Internal Affairs Division investigation report includes a related offense report and other information. A record that was not created in the course of the IAD investigation is not made confidential by its inclusion in a file that is subject to section 143.1214 of the Local Government Code. Thus, if these records exist elsewhere, outside of the section 143.1214 file, they would be subject to disclosure under the Public Information Act. *See* Gov't Code §§ 552.006, 552.022.

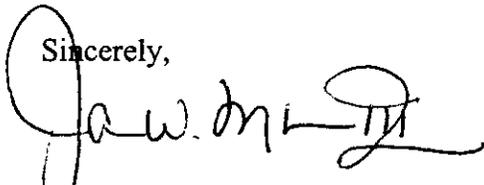
⁴As we are able to make a determination that the submitted information is confidential under other law, we do not consider your claim under section 552.103.

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 133527

Encl. Submitted documents

cc: Ms. Melissa Romine
Bayko, Gibson, Carnegie, Hagan, Schoonmaker & Meyer, L.L.P.
600 Travis, Suite 6500
Houston, Texas 77002-3008
(w/o enclosures)