



November 3, 2000

Ms. Jan Clark
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-4299

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140893.

The City of Houston (the "city") received a request for information concerning Houston Police Department petty cash theft, including records pertaining to disciplinary action. You inform us that you have released some of the records that are responsive to the request. You claim that the remaining responsive records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

You claim that the information you submitted as Exhibit 2 is confidential under section 552.101 of the Government Code in conjunction with provisions of chapter 143 of the Local Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, section 552.101 protects information that is made confidential under other statutes. 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[.]

Local Gov't Code § 143.1214(b). You represent to this office that the information submitted as Exhibit 2 concerns an investigation of charges of misconduct by classified personnel of the Houston Police Department, some of which did not result in disciplinary action. You inform us that you have released records pertaining to individuals who were disciplined. You contend that the investigation records relating to individuals who were not disciplined are confidential under section 143.1214(b). Based on your representations and our review of the information in question, we conclude that Exhibit 2 is confidential under section 143.1214(b) of the Local Government Code and therefore is excepted from disclosure under section 552.101 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).¹

You claim that the records submitted as Exhibit 3 represent personal financial information that is confidential under section 552.101 in conjunction with the common law right of privacy. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from disclosure under section 552.101 in conjunction with common law privacy when (1) the information in question is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) there is no legitimate public interest in its disclosure. *Industrial Found.*, 540 S.W.2d at 685. With respect to personal financial information, this office concluded as follows in Open Records Decision No. 373 (1983):

In our opinion, all financial information relating to an individual — including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history — ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Id. at 3. We also concluded in that same decision that the determination of whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on a case-by-case basis. *Id.* at 4. Thus, Open Records Decision

¹We note that the submitted information relating to the investigation includes records that appear to have existed prior to the investigation. A record that was not created in the course of the 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 such records exist elsewhere, outside of the section 143.1214(b) file, they are subject to disclosure. *See Gov't Code* §§ 552.006, .022(a), .221.

No. 373 (1983) distinguishes between confidential background financial information furnished to a governmental body about an individual and the basic facts regarding a particular financial transaction between the individual and the governmental body. *See* Open Records Decision No. 523 at 4 (1989). Having carefully examined the information submitted as Exhibit 3, we find that it constitutes background financial information about an individual. Therefore, we agree that it is confidential under section 552.101 in conjunction with common law privacy.

The submitted information also includes medical records, the disclosure of which is governed by the Medical Practice Act, as codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the Occupations Code provides in relevant part:

(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 . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). The Medical Practice Act includes provisions that govern the disclosure of information that it encompasses. *See* Occ. Code §§ 159.003, .004, .005, .006. This office has determined that in governing access to a specific subset of information, the Medical Practice Act prevails over the more general provisions of the Public Information Act.² Therefore, the medical records submitted as Exhibit 4 may be released only in accordance with the Medical Practice Act.

Lastly, you claim that responsive records relating to grand jury proceedings are confidential under section 552.101 of the Government Code in conjunction with article 20.02 of the Code of Criminal Procedure. Article 20.02(a) provides that “[t]he proceedings of the grand jury shall be secret.” Thus, information that reveals the proceedings of a grand jury is confidential under article 20.02(a) of the Code of Criminal Procedure and therefore is excepted from disclosure under section 552.101. Upon careful review, we agree that the information submitted as Exhibit 5 is confidential under section 552.101 in conjunction with article 20.02(a) of the Code of Criminal Procedure.

²*See* Open Records Decision No. 598 (1991). The Seventy-sixth Legislature repealed the predecessor statute, article 4495b of Vernon’s Texas Civil Statutes, in enacting the Occupations Code. *See* Act of May 13, 1999, 76th Leg., R.S., ch. 388, §§ 6, 7, 1999 Tex. Gen. Laws 1431, 2439-40. The legislation was a non-substantive codification.

In summary, the submitted investigation records are confidential under section 552.101 of the Government Code in conjunction with section 143.1214(b) of the Local Government Code. The personal background financial information is confidential under section 552.101 in conjunction with common law privacy. The records relating to grand jury proceedings are confidential under section 552.101 in conjunction with article 20.02(a) of the Code of Criminal Procedure. All of the records that are confidential under section 552.101 must be withheld from the requestor. The responsive medical records may be released only in accordance with the Medical Practice Act.

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; 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).

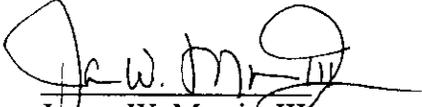
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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/seg

Ref: ID# 140893

Encl. Submitted documents

cc: Ms. Angela D. Johnson
Sanes Matthews
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Houston, Texas 77030
(w/o enclosures)