



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2003

Mr. Kuruvilla Oommen  
Assistant City Attorney  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251-1562

OR2003-8072

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190831.

The Houston Police Department (the "department") received a request for a specified investigation report. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the submitted information includes medical record information that is subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. The MPA provides 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). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 546 (1990) (finding that because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records), 487 (1987), 370 (1983), 343 (1982). When a patient is deceased, as here, medical record information may be released only on the signed consent of the deceased's personal representative. *See* Occ. Code §§ 159.005(a)(5). The consent must specify (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. *See* Occ. Code §§ 159.004, .005. In addition, information that is subject to the MPA also includes information that was obtained from medical records. *See id.* § 159.002(a), (b), (c); *see also* Open Records Decision

No. 598 (1991). Section 159.002(c) also requires that any subsequent release of medical record information be consistent with the purposes for which the governmental body obtained the information. *See* Open Records Decision No. 565 at 7 (1990). We have marked the medical record information that is subject to the MPA. *See* Occ. Code § 159.005(a)(5), (b). The department may only disclose this information in accordance with the access provisions of the MPA. Absent the applicability of an MPA access provision, the department must withhold this information pursuant to the MPA.

Next, we note that the submitted information includes EMS records. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. *See* Open Records Decision No. 598 (1991). Section 773.091 provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

....

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. . . .

Health & Safety Code § 773.091(b), (g). Thus, except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See* Health & Safety Code §§ 773.091-.094. We note, however, that records that are confidential under section 773.091 may be disclosed to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf for the release of confidential information.” Health & Safety Code §§ 773.092(e)(4), .093. Section 773.093 provides that a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. We have marked the EMS records that are subject to chapter 773 of the Health and Safety Code. If section 773.092 applies in this instance, the department must release these marked EMS records to the requestor. *See* Health & Safety Code §§ 773.092, .093; *see also* Open Records Decision No. 632 (1995). Otherwise, the department must withhold these marked EMS records pursuant to section 773.091(b) of the Health and Safety Code, except for the information in these records that is not confidential under section 773.091(g).

We now address your claims regarding the remaining submitted information and the information in the marked EMS records that is not made confidential under section 773.091(g) of the Health and Safety Code. You claim that this information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.<sup>1</sup> Section 143.1214 provides in part:

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a firefighter or 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 firefighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department's use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

- (1) to another law enforcement agency or fire department;
- (2) to the office of a district or United States attorney; or
- (3) in accordance with Subsection (c).

(c) The department head or the department head's designee may forward a document that relates to a disciplinary action against a firefighter or police officer to the [civil service] director or the director's designee for inclusion in the firefighter's or police officer's personnel file maintained under Sections 143.089(a)-(f) [of the Local Government Code] only if:

- (1) disciplinary action was actually taken against the firefighter or police officer;
- (2) the document shows the disciplinary action taken; and
- (3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

Local Gov't Code § 143.1214(b)-(c). You state that this information concerns an investigation of allegations of misconduct by City of Houston firefighters. You inform us that this information is held in a file created by the Office of Inspector General for its investigatory use and is not held in personnel files maintained under section 143.089 of the

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

Local Government Code. You also state that this information does not meet the conditions specified by section 143.1214(c) for inclusion in a firefighter's civil service file. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(f). Based on your representations and our review of this information, we conclude that this information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code as information made confidential by law. *See* Open Records Decision No. 642 (1996) (concluding that files relating to investigations of Houston Fire Department personnel by Public Integrity Review Group of Houston Police Department were confidential under section 143.1214).<sup>2</sup>

In summary, absent the applicability of an MPA access provision, the department must withhold the medical record information that we have marked pursuant to the MPA. We have marked the EMS records that may only be released in accordance with section 773.092 of the Health and Safety Code. The department must withhold the remaining submitted information, to include the information not made confidential under section 773.091(g) of the Health and Safety Code, pursuant to section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.

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

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<sup>2</sup> Because we base our ruling regarding this information on section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code, we need not address your remaining arguments.

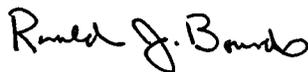
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may 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 Dep't of Pub. 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 Hadassah Schloss at the Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 190831

Enc. Marked documents

c: Mr. Willie High Coleman, Jr.  
Bates & Coleman, P.C.  
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Houston, Texas 77002  
(w/o enclosures)