



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 24, 2003

Ms. Judith Sachitano Rawls  
Assistant City Attorney  
City of Beaumont  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2003-8439

Dear Ms. Rawls:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191523.

The Beaumont Police Department (the "department") received a request for nine categories of information related to a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of submitted documents appear to have been produced in response to a grand jury subpoena. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies that are subject to chapter 552 of the Government Code, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. See Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. *Id.* at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is applicable. *Id.* Thus, to the extent that the documents we have marked were obtained by the department pursuant to a grand jury subpoena or at the direction of the grand jury, the information is in the custody of the department as agent of the grand jury and is not subject to disclosure under chapter 552. *Id.* at 4. To the extent, however, that this information was not obtained by the department pursuant to a grand jury subpoena or at the direction of the grand jury, this information is subject to disclosure under chapter 552 and must be released unless an exception to disclosure is demonstrated to be applicable. As we are unable to determine the extent to which this information is subject to chapter 552, we address

your exceptions to disclosure in regard to this information, as well as the remaining submitted information.

Further, we note that the submitted information contains medical records, access to which is governed by the Medical Practice Act, (the "MPA"), chapter 159 of the Occupations Code. Open Records Decision No. 565 at 7 (1990). Section 159.002 of the MPA provides in pertinent 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, other than a person listed in Section 159.004 who is 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.

This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See* Open Records Decision No. 598 (1991). We also have determined that the MPA ordinarily encompasses only records created either by a physician or by someone acting under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). However, when a file is created as the result of a hospital stay, we have concluded that all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician, created or maintained by a physician, for purposes of the MPA. *See* Open Records Decision No. 546 (1990). When a patient is deceased, as is the case here, medical records pertaining to the deceased patient may only be released upon the signed consent of the deceased's personal representative. *See* Occ. Code §§ 159.005(a)(5). Medical records must be released upon signed, 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. *See* Occ. Code §§ 159.004, .005. The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 598 (1991). We have marked the medical records that may be released only as provided under the MPA.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we agree that the remaining information in Exhibit B pertains to an investigation

that concluded in a result other than conviction or deferred adjudication. Therefore, section 552.108(a)(2) is applicable to the remaining information in Exhibit B.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (listing basic information that must be released from offense report in accordance with *Houston Chronicle*). Thus, with the exception of the basic offense and arrest information, the department may withhold the remaining information in Exhibit B from disclosure based on section 552.108.<sup>1</sup> We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information deemed confidential by statutes such as section 143.089 of the Local Government Code. You state that the City of Beaumont is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that a city's civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the officer's civil service file maintained under section 143.089(a). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See *Id.* §§ 143.051-.055. Such records are subject to release under chapter 552 of the Government Code. See *Id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the remaining information in Exhibit C is maintained in the department's internal file of the officer in question pursuant to section 143.089(g). Based on the

---

<sup>1</sup>Generally, basic information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

department's assertion that the submitted information is maintained in the department's internal file, we find that the remaining information in Exhibit C is confidential pursuant to section 143.089(g) of the Local Government Code, and it must be withheld under section 552.101 of the Government Code.<sup>2</sup>

Finally, Exhibit D contains EMS records. Access to EMS records is governed by the provisions of the Emergency Medical Services Act, Health and Safety Code sections 773.091–.173. *See* Open Records Decision No. 598 (1991). Section 773.091 of the Emergency Medical Services Act provides in part:

(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 . . . .

Confidential EMS records may be released to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf.” Health & Safety Code § 773.092(e)(4). When a patient is deceased, his personal representative may consent to the release of his records. Health & Safety Code § 773.093(a); *see also* Open Records Decision No. 632 (1995) (defining “personal representative” for purposes of EMS Act). This consent must be written and signed by the patient, authorized representative, or personal representative and 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. Health & Safety Code § 773.093(a). Section 773.093(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Therefore, if section 773.092 applies, the department must release the EMS records to the requestor. *See* Health & Safety Code §§ 773.092, .093; Open Records Decision No. 632 (1995). Otherwise, the department must withhold the EMS records under section 552.101 of the Government Code to the extent that they are made confidential by section 773.091(b) of the Health and Safety Code. *See* Health & Safety Code § 773.091(g)

---

<sup>2</sup>We note that Exhibit C includes documents related to the suspension of the officer in question. Information related to disciplinary action taken against a police officer must be placed in the officer’s civil service file maintained under section 143.089(a). Additionally, section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director’s designee.

(stating confidentiality of EMS records “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”).

In summary, we conclude that to the extent that the documents we have marked were obtained by the department pursuant to a grand jury subpoena or at the direction of the grand jury, the information is in the custody of the department as agent of the grand jury and is not subject to disclosure under chapter 552 as a record of the judiciary. To the extent, however, that this information was not obtained by the department pursuant to a grand jury subpoena or at the direction of the grand jury, and in regard to the remaining submitted information, we conclude that: 1) the medical records we have marked may only be released in accordance with the MPA; 2) with the exception of the basic offense and arrest information, the department may withhold the remaining information in Exhibit B based on section 552.108 of the Government Code; 3) the remaining information in Exhibit C must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; and 4) the department must withhold the EMS records in Exhibit D under section 552.101 in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g). As our ruling on these issues is dispositive, we need not address your remaining arguments.

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 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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/lmt

Ref: ID# 191523

Enc: Submitted documents

c: Ms. Shana O'Neal Calderon  
Collins & Watson, L.L.P.  
Shepherd Place, Penthouse  
2323 South Shepherd Drive  
Houston, Texas 77019  
(w/o enclosures)