



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2005

Mr. Steven M. Kean
Deputy City Attorney
City of Tyler
Legal Department
P. O. Box 2039
Tyler, Texas 75710

OR2005-09150

Dear Mr. Kean:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 233903.

The Tyler Police Department (the "department") received eight requests for information pertaining to two specified criminal incidents, related allegations of excessive use of force, information pertaining to certain named department officers, and a copy of a home video pertaining "to a soccer fight at Lindsey Park." You state that the department will release some of the requested information. You claim that the department is not required by the Act to respond to a portion of one of the requests. Otherwise, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information, some of which consists of representative samples.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that you have not submitted for our review information related to the home video of the "soccer fight at Lindsey Park." To the extent the department maintains additional information responsive to this request, we assume it has been released. If not, such information must be released at this time. *See* Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Next, we address your contention that the department is not required by the Act to respond to the request for the name of the officer placed on administrative leave and the number of years he has served as well as the names of all supervising patrol officers at the scene and years of service they have served. Although the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request, *see* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990), a governmental body must make a good-faith effort to relate a request to information that it holds, *see* Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). With respect to this request for information concerning department officers and patrol supervisors, we find that the department is required by the Act to make a good-faith effort to relate this request to information that the department maintained or controlled on the date it received the request for information. In this case, as you have submitted information that you inform us is responsive to this request and raised exceptions to disclosure for such information, we consider the department to have made a good-faith effort to identify information that is responsive to this request. We will therefore address the applicability of your claimed exceptions to this information.

Next, we note that offense report 05-33511 contains medical records that are subject to the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Access to medical records is governed by the MPA, section 159.002 of which provides in relevant part as follows:

(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.

Occ. Code § 159.002(b)-(c). We have found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute

physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990). Medical records must be released upon the patient’s 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. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the medical records that are subject to the MPA.

We next address your claim under section 552.108 of the Government Code with respect to the remaining information in offense reports 05-33525 and 05-33511. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that these offense reports relate to pending criminal investigations. Based upon this representation, we conclude that the release of these offense reports would interfere with the detection, investigation, or prosecution of crime. See *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) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. We note that you seek to withhold the names of certain officers in these offense reports. However, the names of arresting officers and investigating officers are considered basic information that must be released based on the holding in *Houston Chronicle*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic front page offense and arrest information, the department may withhold offense reports 05-33525 and 05-33511, including the video and tape recordings that are related to these criminal investigations, based on section 552.108(a)(1).

We note that section 552.147 of the Government Code² provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

Therefore, the arrestees' social security numbers in offense reports 05-33525 and 05-33511 must be withheld pursuant to section 552.147.³

Next, we address your claim that the submitted internal affairs and officer personnel files are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. You inform us that the City of Tyler 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 the 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 investigates a police officer's misconduct, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a).⁴ *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or in possession of the police department because of its investigation into a police officer's misconduct, and the police department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under the Act. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You represent that the information you seek to withhold on this basis is maintained in the department's personnel files pursuant to section 143.089(g). Based on this representation, we conclude that this information is confidential under section 143.089(g) of the Local Government Code and must therefore be withheld under section 552.101 of the Government Code. We note, however, that section 143.089(g) requires a police department that 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. If you have not already done so, you must refer the requestors to the civil service director at this time.

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

⁴Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Local Gov't Code § 143.051-.055.

In summary, the medical records we have marked in offense report 05-33511 may only be released in accordance with the MPA. With the exception of basic information, the department may withhold the remaining information in offense reports 05-33511 and 05-33525 pursuant to section 552.108(a)(1) of the Government Code. The arrestees' social security numbers in these offense reports must be withheld under section 552.147 of the Government Code; otherwise, the basic information, including the names of the arresting officers and investigating officers, must be released. The remaining submitted information maintained in the department's personnel files must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. As we reach these conclusions, we need not address your remaining arguments against disclosure.

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 ten 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 233903

Enc. Submitted documents

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