



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 24, 2009

Ms. Jerris Penrod Mapes  
Assistant City Attorney  
Killeen Police Department  
402 North Second Street  
Killeen, Texas 76541-5298

OR2009-05450

Dear Ms. Mapes:

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# 340952 (Killeen ID number W000651).

The Killeen Police Department (the "department") received a request for a named department officer's personnel file. You state that the City of Killeen (the "city") has released a portion of the requested information from the named officer's civil service file. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the requestor specifically excluded "home address, [tele]phone number, social security number, date of birth, driver's license number, [and] license plate information" from his request. Thus, this information is not responsive to the request. This ruling does not address the public availability of the information that is not responsive to the request, and the department need not release that information in response to the request.

Section 552.101 of the Government Code excepts 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 protected by other statutes, such as section 143.089 of the Local Government Code. You state that the city is a civil service city under chapter 143 of the Local Government Code.

Section 143.089 provides for the maintenance of two different types of personnel files for each police officer employed by a civil service city: one that must be maintained as part of

the officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). Under section 143.089(a), the officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Section 143.089 does not make confidential the information maintained in an officer's civil service file.

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Local Gov't Code § 143.089(g). The information in a file maintained by a police department pursuant to section 143.089(g) is confidential. Local Gov't Code § 143.089(g); *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet.) (restricting confidentiality under Local Gov't Code § 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You state that the information submitted as Attachment D is held in a file maintained by the department under section 143.089(g). Based on your representations and our review of the information at issue, we conclude that Attachment D is confidential under section 143.089(g) of the Local Government Code and must be withheld from the requestor on that basis under section 552.101 of the Government Code.

You also seek to withhold information maintained in the named officer's civil service file, which you have submitted as Attachment E.<sup>1</sup> You state that Attachment E consists of medical records that are excepted under section 552.101 of the Government Code. Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 provides in pertinent part:

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<sup>1</sup>You inform us that "because all records are in the possession of the City of Killeen and the city attorney's office would ultimately have to assist the civil service director in responding, the requestor has not been referred to the director of civil service so as to minimize delay." Thus, you are responding to this request for information on behalf of both the department and the civil service director.

(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). 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. 487 (1987), 370 (1983), 343 (1982). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See* Occ. Code. § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991). Medical records must be released upon the governmental body's receipt of 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. *See* 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. *See* Open Records Decision No. 565 at 7 (1990). We have marked the medical records that may only be released in accordance with the MPA. However, the remaining information in Attachment E does not consist of medical records for the purposes of the MPA.

Next, the submitted L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health required by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") are confidential under section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Chapter 1701 of the Occupations Code is applicable to TCLEOSE. Specifically, section 1701.306 provides as follows:

(a) [TCLEOSE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining

psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Upon review, the department must withhold the submitted L-2 and L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Next, you claim the remaining information in Attachment E is excepted from disclosure based on the doctrine of common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Further, this office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked pursuant to common-law privacy. However, we find that you have failed to establish that any portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 of the Government Code on that ground.

We note that some of the remaining information is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts the family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether

the officer made an election under section 552.024 of the Government Code.<sup>2</sup> Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). Accordingly, the department must withhold the information we have marked under section 552.117(a)(2).

In summary, the department need not release the non-responsive information. The department must withhold Attachment D under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The department may only release the medical records we have marked in accordance with the MPA. The department must withhold the submitted L-2 and L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The remaining responsive information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/dls

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<sup>2</sup>We note that the previous determination issued in Open Records Decision No. 670 (2001) authorizes the redaction of a peace officer's home address and telephone number, personal cellular phone and pager number, social security number, and family member information pursuant to section 552.117(a)(2) of the Government Code without the necessity of requesting a decision under section 552.301 of the Government Code. *See* Open Records Decision No. 622 at 6 (1994) (addressing statutory predecessor to Gov't Code § 552.117(a)(2)).

Ref: ID# 340952

Enc. Submitted documents

c: Requestor  
(w/o enclosures)