



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 7, 2009

Mr. Mark G. Mann  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2009-14155

Dear Mr. Mann:

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# 357509 (Garland request nos. GCA09-0561 and GCA09-0576).

The Garland Police Department (the "department") received two requests. One of the requests seeks information related to the arrests of two specified individuals and materials related to the internal affairs investigations pertaining to these arrests, including certain information about the involved officers and related in-car video recordings. The other request seeks information pertaining to the same internal affairs investigations and the arrest report pertaining to a named individual. You inform this office the department was unable to locate any in-car video recording related to the specified arrests.<sup>1</sup> You state you have released some responsive information. You claim the information you marked is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the department. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup>We 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.

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 section 143.089 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 *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made the records confidential. *See id.* at 949; Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files). This confidentiality extends to any records maintained in the internal file that reasonably relate to the police officer's employment relationship. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied).

You inform this office that Garland is a civil service city under chapter 143 of the Local Government Code. You represent the records you marked pertaining to internal affairs investigations are maintained in the involved officers' departmental personnel files. You state these departmental files are maintained for the department's use, and are separate from these officers' civil service files. The investigations found in these files did not result in disciplinary action against the officers for purposes of section 143.089(a)(2). We additionally find these records relate to the officers' employment relationship with the department. Based on your representations and our review, we agree the department must withhold the records you marked under section 143.089(g) of the Local Government Code.

We next turn to the public availability of the requested arrest report and investigative documents. You assert some of the investigative documents are confidential medical records. Medical records are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See Occ. Code § 151.001*. Section 552.101 encompasses section 159.002 of the MPA, which provides in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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.

*Id.* § 159.002(a)-(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). In addition, because hospital treatment is routinely conducted under the supervision of physicians, documents relating to diagnosis and treatment during a hospital stay also constitute protected medical records. *See* Open Decision Nos. 598 (1991), 546 (1990). We have reviewed the submitted information and find that the records we marked relate to diagnosis and treatment during a hospital stay, and therefore consists of medical records for purposes of the MPA. Therefore, the records we marked must be withheld under section 552.101 in conjunction with the MPA.<sup>3</sup>

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Although a compilation of a private citizen's criminal history is generally not of legitimate concern to the public, in this instance there is a legitimate public interest in the arrestee's history of committing offenses identical or similar to the alleged offense in his current arrest. Therefore, the criminal history compilation you marked under section 552.101 in conjunction with common-law privacy is not confidential under section 552.101 and must be released.

You marked the Texas motor vehicle record information in the remaining information under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. We agree the department must withhold the Texas driver's license numbers you marked under section 552.130 of the Government Code.

In summary, the department must withhold the departmental records you marked under section 552.101 of the Government Code in conjunction with section 143.089 of the Local

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

Government Code. The medical records we marked must be withheld under section 552.101 in conjunction with the MPA. Finally, the department must withhold the Texas driver's license numbers you marked under section 552.130 of the Government Code. The remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long horizontal flourish extending to the right.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 357509

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)