



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 30, 2010

Mr. C. Patrick Phillips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2010-04457

Dear Mr. Phillips:

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# 374369 (Fort Worth PIR No. 1611-10).

The City of Fort Worth (the "city") received a request for the requestor's personnel file. You state you have released a portion of the requested information. 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.

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 that other statutes make confidential, such as section 143.089 of the Local Government Code. You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another 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). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension,

demotion, and uncompensated duty. *Id.* §§ 143.051-.055; *see* Attorney General Opinion JC-0257 (written reprimand is not disciplinary action for purposes of Local Gov't Code chapter 143). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, 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). *See Abbott v. 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 are in the possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to a police officer's alleged misconduct may not be placed in his civil service file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to 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 state that the submitted information in Exhibit C is contained in the city's internal file for the named officer which is maintained by the city's police department for its own use. You further state that any documents in Exhibit C involving allegations of misconduct were determined to be unfounded or did not result in discipline under chapter 143. Based on these representations and our review, we agree that the submitted information in Exhibit C is confidential under section 143.089(g) of the Local Government Code and must generally be withheld from disclosure under section 552.101 of the Government Code.

However, we note the submitted information includes the requestor's medical records. Medical records are governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA 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.

Occ. Code § 159.002(a)-(c). Medical records must be released on 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. *Id.* §§ 159.004, .005. As the subject of the submitted medical records, the requestor whose medical records are at issue may obtain his records upon compliance with the release provisions. *See id.* §§ 159.004, .005.

The submitted information also includes the requestor's mental health records. Section 611.002 of the Health and Safety Code, provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 and 611.0045.

Health & Safety Code § 611.002(a), (b); *see also id.* § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient's behalf, or a person who has written consent of the patient. Health & Safety Code §§ 611.004, .0045. The mental health records in the submitted information are confidential under section 611.002 of the Health and Safety Code and may only be released in accordance with sections 611.004 and 611.0045.

We also note the submitted information contains the requestor's fingerprints. Fingerprints are governed by chapter 560 of the Government Code. Section 560.001(1) provides that "[b]iometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." Gov't Code § 560.001(1). Under section 560.003 of the Government Code, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. Section 560.002 states, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell,

lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Thus, the requestor has a right of access to his own fingerprints under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

In this instance, however, the city seeks to withhold the medical and mental health records and fingerprints from the requestor under section 143.089 of the Local Government Code. Thus, we must address the conflict between the requestor’s right of access under the MPA, sections 611.004 and 611.0045, and section 560.002, respectively, and the confidentiality provided these records under section 143.089 of the Local Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute, unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov’t Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). The MPA, sections 611.004 and 611.0045, and section 560.002 are more specific statutes than section 143.089 because the MPA applies specifically to medical records, chapter 611 of the Health and Safety Code applies specifically to mental health records, and chapter 560 of the Government Code applies specifically to biometric identifiers, while section 143.089 applies generally to all records in a personnel file. Additionally, section 143.089 of the Local Government Code was enacted prior to both the MPA’s release provision in section 159.004 of the Occupations Code and section 560.002 of the Government Code. *See* Occ. Code § 159.004, *added by* Act of May 17, 1999, 76<sup>th</sup> Leg., ch. 388, § 1 (effective Sept. 1, 1999), *amended by* Act of May 25, 2001, 77<sup>th</sup> Leg., ch. 984, § 3 (effective June 15, 2001); *See* Gov’t Code § 560.002, *added by* Act of May 26, 2001, 77<sup>th</sup> Leg., ch. 634, § 2 (effective Sept. 1, 2001); Loc. Gov’t Code § 143.089, *added by* Act of March 1, 1989, 71<sup>st</sup> Leg., ch. 1, § 25(c) (effective Aug. 28, 1989), *amended by* Act of May 29, 1989, 71<sup>st</sup> Leg., ch. 1248, § 84 (effective Sept. 1, 1989). While chapter 611 of the Health and Safety Code was enacted before section 143.089, it does not appear that it was the legislature’s manifest intent that the more general provision prevail. *See* Act of May 9, 1979, 66<sup>th</sup> Leg., R.S., ch. 239, 1979 Tex. Gen. Laws 512 (enacting statutory predecessor to Health & Safety Code ch. 611). Therefore, the medical and mental health records and fingerprints are subject to the MPA, section 611.002 of the Health and Safety Code, and section 560.003 of the Local Government Code, respectively, and may only be released in accordance with their release provisions. *See* ORD 598.

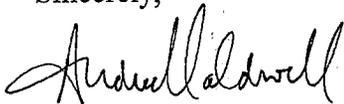
In summary, the medical and mental health records and fingerprints within the submitted information may only be released to the requestor in accordance with the MPA, sections 611.004 and 611.0045 of the Health and Safety Code, and section 560.002 of the Local Government Code, respectively. The city must withhold the remaining information

under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

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,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 374369

Enc. Submitted documents

c: Requestor  
(w/o enclosures)