



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2011

Ms. Jessica Sangsvang  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2011-08386

Dear Ms. Sangsvang:

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# 420601 (PIR No. W007638).

The City of Fort Worth (the "city") received a request for (1) police records pertaining to a specified incident and (2) any internal affairs investigations arising from the same incident. You state the city has redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). Further, you state you have redacted social security numbers under section 552.147 of the Government Code.<sup>1</sup> You state you have released some of the requested information. You claim 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 made confidential by other statutes, such as section 143.089 of the Local Government Code. We note the city is a civil service

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<sup>1</sup>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.

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). The police officer's civil service file must contain specific items, including commendations, periodic evaluations by the officer's supervisor, and documents from the employing department relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code.<sup>2</sup> *See id.* § 143.089(a)(1)-(2). In cases in which a police department investigates an 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). *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 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 are subject to release under chapter 552 of the Government Code. *See* Local Gov't Code § 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 a police officer's employment relationship with the police department and that is maintained in a police department's internal personnel 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. Tex. Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied).

You state the submitted information is kept in the city police department's personnel files for the officers at issue and is maintained under section 143.089(g). You state this information relates to an internal affairs investigation that did not result in disciplinary action against the involved officers. We note, however, the submitted information includes law enforcement records which are also maintained separate and apart from the internal affairs investigation. In this instance, the requestor not only seeks internal affairs records, but also makes a separate, specified request for law enforcement records of the criminal investigation pertaining to the specified incident. Accordingly, both the officers' personnel files and any copies of investigatory materials that the city police department maintains for law enforcement purposes are responsive. The city may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files.

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<sup>2</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

Accordingly, based on the city's representations and our review of the information at issue, we agree most of the submitted information is confidential and must generally be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. However, the remaining law enforcement records, which we have marked, are not confidential under section 143.089(g) of the Local Government Code and may not be withheld under section 552.101 of the Government Code on that basis.

Further, we note the submitted information includes the medical records of the requestor's spouse; thus, as the individual's spouse, the requestor may be acting as his authorized representative. 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). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded 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). We have also found 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 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. We have marked the portion of the submitted information that constitutes medical records that may only be released in accordance with the MPA. Open Records Decision No. 598 (1991).

The submitted information also includes mental health records of the requestor's spouse. 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.

In this instance, however, the city seeks to withhold the medical and mental health records from the requestor under section 143.089 of the Local Government Code while sections 159.004 and 159.005 of the MPA and sections 611.004 and 611.0045 of the Health and Safety Code may provide the requestor with a right of access to this information. Thus, there is a conflict between section 143.089 of the Local Government Code and the applicable provisions of the MPA and chapter 611 of the Health and Safety 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 and sections 611.004 and 611.0045 are more specific statutes than section 143.089 because the MPA applies specifically to medical records and chapter 611 of the Health and Safety Code applies specifically to mental health records, 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 the MPA's release provision in section 159.004 of the Occupations 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); 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 are subject to the MPA and section 611.002 of the Health and Safety Code, respectively, and may only be released in accordance with their release provisions. *See* ORD 598.

We note the law enforcement records being released contain information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). However, as noted above, the requestor is the spouse of one of the individuals whose information is at issue and may be acting as her spouse's authorized representative. Section 552.130 protects privacy interests, and as her spouse's authorized representative, the requestor would have a right of access under section 552.023 to the information marked under section 552.130. *See id.* § 552.023. If the requestor is seeking the information at issue on behalf of her spouse, pursuant to section 552.023, the requestor has a special right of access to her spouse's Texas motor vehicle record information, which we have marked, under section 552.130. If the requestor is not seeking the information at issue on behalf of her spouse, then the city must withhold his marked Texas motor vehicle record information under section 552.130 of the Government Code. In either event, the city must withhold the remaining Texas motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>3</sup>

In summary, the medical and mental health records within the submitted information may only be released to the requestor in accordance with the MPA and sections 611.004 and 611.0045 of the Health and Safety Code. Apart from the law enforcement records we have marked for release, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. In releasing the marked law enforcement records, the city must withhold the information we marked under section 552.130 of the Government Code. However, the city may not withhold the information pertaining to the requestor's spouse if the requestor is acting as her spouse's authorized representative.

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.

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<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/dls

Ref: ID# 420601

Enc. Submitted documents

c: Requestor  
(w/o enclosures)