



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 27, 2011

Mr. Robert K. Nordhaus
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2011-18996

Dear Mr. Nordhaus:

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# 438811 (COSA File No. W003501).

The City of San Antonio (the "city") received a request for (1) all reports pertaining to a specified emergency medical services ("EMS") call involving a named individual; (2) the results of any investigation into the death of the named individual; and (3) information regarding the employment statuses and any disciplinary action concerning named EMS employees involved in the specified EMS call. You have provided the requested information pertaining to the employment statuses and disciplinary action to the requestor. 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. 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 fire fighter: one that must be maintained as part of the fire fighter's civil service file and another the fire department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The fire fighter's civil service file must contain certain specified items, including commendations, periodic evaluations by the fire fighter's supervisor, and documents relating to any misconduct in

which the department took disciplinary action against the fire fighter 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. In cases in which a fire department investigates a fire fighter's misconduct and takes disciplinary action against a fire fighter, 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 fire fighter'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 fire fighter'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, information maintained in a fire 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 seek to withhold the information in Exhibit 3 under section 143.089(g) because the information pertains to an internal investigation of two city fire department (the “department”) emergency medical technicians (“EMT”) that did not result in discipline. Section 143.089 applies only to police officers and fire fighters. *See* Local Gov't Code § 143.089; *see also id.* § 143.003(4) (defining “fire fighter” for purposes of chapter 143 of the Local Government Code). You explain the EMTs whose information is at issue are fire fighters assigned to the department's Emergency Medical Services Division, and are entitled to civil service protection under chapter 143 of the Local Government Code. *See id.* § 143.005(b) (stating fire department employee whose primary duties are to provide emergency medical services is considered to be fire fighter who is member of fire department, is entitled to civil service protection, and is covered by chapter 143). You state the information is maintained in the department's internal files as authorized under section 143.089(g) of the Local Government Code. Based on your representations and our review we agree the information in Exhibit 3 is confidential pursuant to section 143.089(g). Accordingly, the city must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.¹

Section 552.101 also encompasses section 773.091 of the Health and Safety Code, which provides, in relevant part:

¹As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure for portions of this information.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the EMS personnel or physician or maintained by an EMS provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. You claim all of the records in Exhibit 2 are confidential under section 773.091. You indicate the records are maintained by the department and reflect the treatment of a patient by EMS personnel. Based on your representations and our review, we agree some of the information at issue, which we have marked, constitutes EMS records that are confidential under section 773.091(b) of the Health and Safety Code. Although you claim none of the information subject to section 773.091(b) is subject to section 773.091(g), the records clearly reflect they contain information regarding, among other things, the patient's nature of injury or illness, age, and sex. Thus, with the exception of the information subject to section 773.091(g), which is not confidential and must be released, the city must withhold the EMS records we have marked in Exhibit 2 under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The remaining information, however, consists of department dispatch records and case history records. You have not demonstrated how this information constitutes records of a patient's identity, evaluation, or treatment created by EMS personnel and maintained by an EMS provider. Consequently, the city may not withhold any of the remaining information in Exhibit 2 on the basis of section 773.091(b) of the Health and Safety Code. As you have not claimed any other exceptions to disclosure for this information, the city must release the remaining information in Exhibit 2.

In summary, the city must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. With the exception of the information subject to section 773.091(g), the city must withhold the EMS records we have marked in Exhibit 2 under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The city must release the remaining information.

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, 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 cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 438811

Enc. Submitted documents

c: Requestor
(w/o enclosures)