



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 22, 2012

Mr. Charles H. Weir  
Mr. James Kopp  
Assistant City Attorneys  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2012-16871

Dear Mr. Weir and Mr. Kopp:

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# 471509 (COSA File No. W009910).

The City of San Antonio (the "city") received a request for a specified Internal Affairs Unit investigation file, including all respondent reports and the drug test results of a named individual. You claim portions of the submitted information are excepted from disclosure under section 552.108 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 section 143.089 of the Local Government Code. We understand 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). 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 (2000) (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, information maintained in a police 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).

We note the requestor is an attorney representing one of the officers who is the subject of the internal investigation at issue. You inform us the requested internal affairs investigation file is contained in the requestor's client's civil service file maintained under section 143.089(a) of the Local Government Code. We note section 143.089(e) of the Local Government Code grants a right of access to a police officer for "any letter, memorandum, or document placed in the person's personnel file." *See id.* § 143.089(e). This office has interpreted this provision to grant a police officer an affirmative right of access to the information in his or her personnel file maintained under section 143.089(a). *See* Open Records Decision No. 650 at 2 n.2 (1996). Thus, this requestor has a statutory right of access to his client's civil service file as his client's authorized representative. You seek to withhold portions of the submitted information under section 552.108 of the Government Code. However, section 552.108 is a general exception to disclosure. This office has found that a statutory right of access overcomes general exceptions to disclosure under the Act. *See* Open Records Decision Nos. 613 at 3 (1994) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, the city may not withhold any of the submitted information under section 552.108 or other general exceptions to disclosure in the Act. Accordingly, the submitted information must generally be released to the requestor pursuant to section 143.089(e).

We note the submitted information contains medical records subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code.<sup>1</sup> See Occ. Code §§ 151.001-168.202. Section 552.101 also encompasses information protected by the MPA. 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). 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). Medical records must be released upon the patient's signed, written consent, provided 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. Occ. Code §§ 159.004, .005. Upon review, we find a portion of the submitted information constitutes medical records. The marked medical records may generally only be released in accordance with the MPA.

Section 550.065(b) of the Transportation Code states except as provided by subsection (c) or subsection (e), accident reports are privileged and for the confidential use of certain specified entities. Transp. Code § 550.065(b). The submitted CR-3 accident report was completed pursuant to chapter 550 of the Transportation Code. See *id.* § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

pieces of information specified by the statute. *Id.* The requestor has not provided the city with two of the three requisite pieces of information specified by the statute. Accordingly, the city must generally withhold the submitted CR-3 accident report, which we have marked, under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state, or another state or country. Gov't Code § 552.130(a)(1)-(2). Accordingly, the city must generally withhold the types of information we have marked in the submitted documents and indicated in the submitted photographs and video recordings under section 552.130 of the Government Code.

As previously noted, the requestor has a right of access to the records contained in his client's civil service file, which includes the medical records, the CR-3 accident report, and motor vehicle record information, under section 143.089(e) of the Local Government Code. Thus, we must address the conflict between the access provided under section 143.089(e) of the Local Government Code, the confidentiality or release provided under the MPA, and the confidentiality provided under section 550.065 of the Transportation Code and section 552.130 of the Government Code.<sup>2</sup> Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *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). The MPA, section 550.065 of the Transportation Code, and section 552.130 are more specific statutes than section 143.089(e) because the MPA applies specifically to medical records, section 550.065 of the Transportation Code applies specifically to CR-3 accident reports, and section 552.130 of the Government Code applies specifically to motor vehicle record information, while section 143.089(e) of the Local Government Code applies generally to all records in a individual's civil service file. Thus, we conclude the MPA, section 550.065 of the Transportation Code, and section 552.130 of the Government Code are more specific than section 143.089(e) of the Local Government Code. Therefore, the marked medical records may only be released in accordance with the MPA. The CR-3 accident report must be withheld under section 552.101 in conjunction with section 550.065 of the Transportation Code, and the types of motor vehicle record information we have marked must be withheld under section 552.130 of the Government Code.

In summary, the city may only release the marked medical records in accordance with the MPA. The city must withhold the marked CR-3 accident report under section 552.101 in conjunction with section 550.0650 of the Transportation Code. The city must withhold the

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<sup>2</sup>We note because section 552.130 of the Government Code has its own access provisions, we conclude section 552.130 is not a general exception under the Act.

types of information we have marked in the submitted documents and indicated in the submitted photographs and video recordings under section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/dls

Ref: ID# 471509

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>Because the requestor has a special right of access to the information being released, if the city receives another request for this information from an individual other than this requestor or the requestor's client, the city must again seek a decision from this office.