



March 21, 2002

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2002-1414

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160143.

The City of El Paso (the “city”) received two written requests for, among other things, all records pertaining to an “incident” involving a named city police officer that occurred one month prior to the records requests. You state that the city has released some responsive information to the requestors.¹ You contend, however, that the remaining requested information, a representative sample of which you submitted to this office, is exempted from required public disclosure pursuant to sections 552.101, 552.108, 552.117, and 552.130 of the Government Code.²

We note at the outset that among the records at issue is a medical record relating to the named police officer. The release of medical records is governed by the Medical Practice Act (the “MPA”), Occ. Code § 151.001 *et. seq.* Section 159.002 of the Occupations Code provides in pertinent part:

¹Specifically, you state that the city has released the officer’s Internal Affairs History Card, a document titled “Case Synopsis Summary” from the internal affairs file, the “incident report” from the internal affairs file, and the incident report and portions of a second document from the criminal investigation.

²In reaching our conclusion here, 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 No. 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.

(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). The MPA also includes provisions that govern the disclosure of information that it encompasses. *See id.* §§ 159.003, .004, .005, .006. This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See* Open Records Decision No. 598 (1991). We have marked the document contained in Exhibit C-6 that is subject to the MPA. The city may not release this information unless the MPA permits the city to do so.

We now address your more general claim under section 552.108 of the Government Code with respect to the rest of the submitted information, which consists of records from a criminal investigation as well as from an internal affairs investigation. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 applies to the information. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In support of your claim under section 552.108, you inform us that the criminal and internal affairs investigations, both of which are currently pending, are inter-related and that the information contained in the internal affairs investigation is “similar in nature and content to information that is contained in the criminal investigation of the same matter.” After reviewing the submitted information, we conclude that you have shown that section 552.108(a)(1) is applicable to the information contained in both the criminal and internal affairs files. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

But see Morales v. Ellen, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (section 552.108 not applicable to internal affairs investigation that did not relate to separate criminal investigation).

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The city therefore must release all basic information, including a detailed description of the offenses described in the two files, even if this information does not actually appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The department may withhold the remaining information under section 552.108(a)(1).

You contend, however, that some of the basic information contained in Offense Report No. 01-343046 is excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy. Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. After reviewing Offense Report No. 01-343046, we conclude that none of the “basic information” contained therein constitutes information coming within the right of privacy. Accordingly, all of the basic information contained in this offense report must also be released in its entirety.

In summary, the submitted medical record may be released only if the MPA permits the city to do so. The city may withhold the remaining information under section 552.108(a)(1) of the Government Code, but must release all basic information under section 552.108(c). In light of these determinations, we need not address the applicability of the other exceptions you raise.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

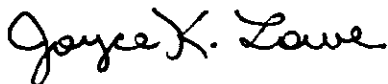
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/RWP/sdk

Ref: ID# 160143

Enc: Submitted documents

c: Mr. Louie Gilot
Reporter
El Paso Times
P.O. Box 20
El Paso, Texas 79901
(w/o enclosures)

Ms. Tracy Pancoast Jones
Managing Editor
KFOX
6001 North Mesa
El Paso, Texas 79912
(w/o enclosures)