

Juvenile Law Case Summaries

By
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Police file of internal affairs investigation into arrest of a juvenile is not required to be disclosed under the Public Information Act [OR2001-0354] (01-4-07)

On January 30, 2001, the Attorney General ruled in Public Information Act opinion that police department records of an internal affairs investigation into the arrest of a juvenile are not required to be disclosed under the Act. However, information in a civil service file concerning the same investigation must be disclosed.

¶ 01-4-07. Attorney General Opinion No. OR2001-0354, 2001 WL 995778 (1-30-01) [*Texas Juvenile Law* (5th Edition 2000)].

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 143698.

The City of Garland (the "city") received a request for information regarding the arrest of a named juvenile, and information regarding an Internal Affairs investigation of a named officer involved in the arrest. You have submitted for our review a "police records" file and an "Internal Affairs" file. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code, and that the Internal Affairs file is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. We have considered the exceptions 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." This section encompasses information protected by other statutes. We first address your assertion that the Internal Affairs file is confidential under section 143.089 of the Local Government Code.

We note at the outset that the Internal Affairs File contains medical record information, access to which is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(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.

The medical records must be released upon 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. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). We have marked the information at issue. We find that the medical record information may be released to the requestor only as provided under the MPA.

Section 143.089 of the Local Government Code applies to civil service cities and contemplates two different types of personnel files, one that the civil service director or the director's designee is required to maintain as part of the police officer's civil service file (the "(a)" file), and one that the department may, but is not required to, maintain for its own internal use (the "(g)" file). Local Gov't Code § 143.089(a), (g). You state that the city is a civil service city.

The (a) file must contain certain specified items, including "any letter, memorandum, or document relating to... any misconduct [by the officer] if the misconduct resulted in disciplinary action [by the city police department] in accordance with [chapter 143 of the Local Government Code]." Id. § 143.089(a)(2). The (a) file also must contain "any letter, memorandum, or document relating to... the periodic evaluation of [the officer] by a supervisor." Id. § 143.089(a)(3). Documents relating to any alleged misconduct or disciplinary action taken must be removed from the (a) file if the city police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. Id. § 143.089(b), (c). Thus, subsections (a)-(c) limit the contents of the (a) file. Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by a city police department for its use (a (g) file), and the court addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. As indicated above, however, in cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place "any letter, memorandum, or document relating to" the misconduct in the personnel file maintained under section 143.089(a). Such records contained in the (a) file are not confidential under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). We note the legislative purpose of section 143.089 as stated by the City of San Antonio court:

All parts of section 143.089 are quite obviously designed to work in harmony with each other and in harmony with the disclosure provisions of the [Public Information] Act under the general legislative policy that allegations of misconduct made against a police officer shall not be subject to compelled disclosure under the Act unless they have been substantiated and resulted in disciplinary action.

851 S.W.2d at 949. Your representations as to the submitted Internal Affairs file indicate that these documents are from the (g) file maintained by the city police department for its internal use. We therefore agree that the submitted Internal Affairs file is confidential and must be withheld. We note, however, that the submitted (g) file pertains to an investigation of alleged misconduct by a city police officer and that the information indicates disciplinary action was taken against the officer. As stated above, section 143.089(a)(2) therefore requires that any letter, memorandum, or document relating to the misconduct be placed in the officer's (a) file. Further, such records in the (a) file are not excepted from required disclosure under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code.

As to the submitted police records file, we find the information contained therein constitutes law enforcement records regarding juvenile conduct that occurred after September 1, 1997. These records are therefore confidential under section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

It does not appear that any of the exceptions in section 58.007 apply; therefore, we conclude that the police records file is confidential in its entirety pursuant to section 58.007(c) of the Family Code. [FN1] You must withhold the information under section 552.101 of the Government Code.

[FN1]. We understand that the requestor is an attorney representing the juvenile. However, we have no indication that the attorney's representation extends to a proceeding under title 3 of the Juvenile Justice Code, and your representations to this office indicate the submitted police records file constitutes records held by the city police department, rather than the prosecuting attorney in the matter. See Fam. Code § 58.007(b)(3).

In summary, the submitted records are confidential in their entirety and must not be released pursuant to section 552.101 of the Government Code. Because we are able to resolve the matter under section 552.101, we do not address the section 552.103 assertion.

Sincerely,

Michael Garbarino
Assistant Attorney General
Open Records Division

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