



August 30, 2000

Mr. Kevin M. McGraw
Assistant City Attorney
City of Waco
Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR2000-3374

Dear Mr. McGraw:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138624.

The City of Waco (the "city") received a written request for "a complete copy of my application file . . . including a copy of the two original print-outs of the lie detector test and the examiner's evaluation." The only documents you specifically seek to withhold from the requestor's application file are the polygraph examiner's report and the requestor's driving record obtained from the Texas Law Enforcement Telecommunications System ("TLETS"). You contend that these documents are excepted from public disclosure pursuant to sections 552.111 and 552.101, respectively, of the Government Code.

Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . [Emphasis in original.]

The polygraph examiner's report reflects whether the requestor was responding in a truthful or deceptive manner during a polygraph examination. This record does not directly relate to the policy mission of the city's police department, but rather pertains solely to a personnel matter related to the city's hiring process. We therefore conclude that the polygraph examiner's report may not be withheld under section 552.111.¹ See *Garland v. Dallas Morning News*, 22 S.W.3d 351, (Tex. 2000) (personnel communications not relating to agency's policymaking not excepted from public disclosure pursuant to section 552.111); *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 457 (Tex. App.--Houston [14th Dist.] 1996), writ denied per curiam, 41 Tex. Sup. Ct. J. 575 (1998) (documents relating to specific employee do not relate to making of new policy but merely implement existing policy). The city must release this document to the requestor.

You next contend that the requestor's driving record obtained from TLETS is made confidential under chapter 411 of the Government Code. Section 411.089 of the Government Code prohibits the release of "criminal history record information" to anyone other than another criminal justice agency for a criminal justice purpose. However, driving records are not criminal history record information. Gov't Code § 411.082(2)(B). We conclude that the city must release the driving information obtained from TLETS to the requestor.

In summary, the city must release to the requestor both the polygraph examination information and the requestor's driving records in their entirety. 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

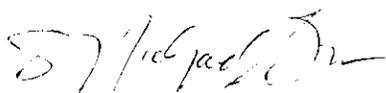
¹We also note that the requestor has a special right of access to the polygraph information pursuant to section 1703.306(a)(1) of the Occupations Code.

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).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/RWP/ljp

Ref: ID# 138624

Encl. Submitted documents

cc: Mr. Pedro Lama
P.O. Box 621
Hewitt, Texas 76643-0621
(w/o enclosures)