



November 18, 2002

Mr. Marcus W. Norris  
City Attorney  
City of Amarillo  
P.O. Box 1971  
Amarillo, Texas 79105-1971

OR2002-6573

Dear Mr. Norris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172335.

The Amarillo Police Department (the “department”), which you represent, received a request for polygraph examination results concerning Thomas P. Coleman. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. With respect to the polygraph examination results, we have considered the exception you claim and reviewed the submitted information.<sup>1</sup> We have also considered comments submitted by the requestor. *See Gov’t Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that other statutes make confidential. Section 1703.306 of the Occupations Code provides as follows:

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<sup>1</sup> We note that you have submitted additional documents that are not responsive to the request for polygraph examination results. We assume you have submitted these additional documents for informational purposes only. We therefore do not address the public availability of the additional documents in the present ruling.

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Polygraph Examiners Board] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

The requestor is not a person to whom section 1703.306 grants access to polygraph information. We note the requestor's argument that certain members of the Panhandle Regional Narcotics Trafficking Task Force (the "task force") have discussed the results of the polygraph examination in the press, and thereby waived the confidentiality of the information. However, a governmental body cannot waive the confidentiality of information made expressly confidential by statute. *See* Open Records Decision Nos. 490 (1988), 166 (1977) (governmental body cannot waive exception to disclosure protecting information deemed confidential by law). *But see* Open Records Decision Nos. 522 (1989) (exceptions that protect only the interests of the governmental body, as distinct from exceptions that are intended to protect information deemed confidential by law or the interests of third parties, are discretionary exceptions and may be waived by the governmental body), 463 (1987) (governmental body can waive discretionary exceptions to disclosure by selective disclosure of information). Accordingly, the confidentiality of polygraph information under section 1703.306 of the Occupations Code cannot be waived through public reference to the information by individuals who have access to it under section 1703.306. We consequently do not agree that the public comments of members of the task force waived the statutory confidentiality of the requested information. We therefore conclude that the department must

withhold the requested polygraph examination results under section 1703.306 of the Occupations Code.

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,

A handwritten signature in black ink, appearing to read 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 172335

Enc: Submitted documents

c: Mr. Gary O. Gardner  
Vigo Park Station  
HCR 4 Box 48-16  
Tulia, Texas 79088  
(w/o enclosures)