



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2003

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2003-5840

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186261.

The Texas Department of Criminal Justice (the "department") received a request for file number SC.12.0158.03.E1. You claim that the submitted information is excepted from disclosure under section 552.134 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that the submitted records include information obtained during the course of a polygraph examination. 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 made confidential by statutes outside of the Public Information Act (the "Act"). Section 1703.306 of the Occupations Code governs information obtained during the course of a polygraph examination and provides in pertinent part:

- (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[.]

Here, the requestor is the examinee. Access to polygraph information is governed by section 1703.306 of the Occupations Code. *See* Occ. Code § 1703.306. Section 1703.306(a)(1) expressly provides the examinee with access to the information.¹ Accordingly, the department must release the polygraph information in the submitted documents to the requestor.

Section 552.134 provides in pertinent part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code, § 552.134(a). We agree that the remaining submitted information concerns an inmate who is confined in a facility operated by the department. Section 552.029 of the Government Code does not apply to the submitted information. Accordingly, we conclude that the department must withhold the remaining submitted information pursuant to section 552.134 of the Government Code.

In summary, the department must release the polygraph information in the submitted documents to the requestor. The remaining submitted information must be withheld pursuant to section 552.134 of the Government 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.

¹Under the rules of statutory construction, a specific statute prevails over a more general statute. Gov't Code § 311.026; *City of Dallas v. Mitchell*, 870 S.W.2d. 21 (Tex. 1994); *see* Open Records Decision Nos. 478 (1987) at 2-3 (predecessor to Act does not govern special rights of access granted under other statutes); 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under predecessor to Act); 43 (predecessor to section 552.103 inapplicable to report made public by statute).

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 Dep't of Pub. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/sdk

Ref: ID# 186261

Enc. Submitted documents

c: Ms. Mary Michael
605 Hayman Street
Huntsville, Texas 77340
(w/o enclosures)