ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2004

Dr. D.C. Jim Dozier
Executive Director
Texas Commission on Law Enforcement
6330 U.S. Highway 290 East, Suite 200
Austin, Texas 78723

OR2004-0694

Dear Dr. Dozier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197800.

The Texas Commission on Law Enforcement (the "commission") received a request for all F-5 forms submitted to the commission regarding a named officer. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure information made confidential by law, including information made confidential by other statutes. The submitted information consists of Reports of Resignation or Separation of License Holder addressed to the commission. These forms, commonly referred to as an "F-5," are subject to section 1701.454 of the Occupations Code. Section 1701.452 requires that a law enforcement agency submit a report to the commission regarding an officer licensed under chapter 1701 whose appointment with the law enforcement agency is terminated. *See* Occ. Code § 1701.452. Section 1701.454 provides:

> (a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.
>
> (b) Except as provided by this subsection, a commission member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the

> commission employee having the responsibility to maintain the report or statement and only if:
>
> > (1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and
> >
> > (2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the commission that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Occ. Code § 1701.454. You inform us that the F-5 forms in the commission's files pertaining to the named individual do not meet the criteria for disclosure provided under section 1701.454. Therefore, the commission must withhold the F-5s of the named individual pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Finally, you ask that we issue a decision that explicitly provides that the commission may withhold information of this type without the necessity of again seeking a decision from this office. We decline to issue such a determination at this time.

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 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,

Lauren E. Kleine

Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/seg

Ref: ID# 197800

Enc. Submitted documents

c: Mr. Carl M. Weeks
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(w/o enclosures)