ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2004

Mr. David B. Casas
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2004-5076

Dear Mr. Casas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203751.

The City of San Antonio (the "city") received a request for (1) personnel records and internal investigations pertaining to a specified individual and (2) copies of certain procedures and rules adopted by the city. You state that the requested personnel records and the requested procedures and rules are being released but claim that portions of the submitted information are 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 considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 1703.306 of the Occupations Code governs access to 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[.]

Occ. Code § 1703.306. Here, the requestor is the representative of one of the examinees. Section 1703.306(a)(1) expressly provides an examinee or other person specifically designated in writing by the examinee with access to information acquired from the examinee's polygraph examination. *See id.* Therefore, pursuant to section 1703.306(a)(1), you must release the polygraph information regarding the requestor's client if the requestor provides the city with written authorization from his client.[1] However, the polygraph information that we have marked, which pertains to an individual who is not the requestor's client, must be withheld under section 552.101 of the Government Code in conjunction with section 1703.306(a)(1).

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).

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[1]We note that while portions of such information would ordinarily be excepted from disclosure under sections 552.101 and 552.130, and possibly under section 552.117(a)(1), the requestor has special rights of access pursuant to section 1703.306 of the Occupations Code and section 552.023 of the Government Code to such information pertaining to his client. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). Because information to be released under section 1703.306 and section 552.023 is confidential with respect to the general public, if the city receives a future request for this information from an individual other than the requestor or his client, the city should again seek our decision.

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,

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 203751

Enc. Submitted documents

c: Mr. Morris E. Munoz
Wiseman, Durst, Owen & Colvin, P.C.
1004 West Avenue
Austin, Texas 78701-2019
(w/o enclosures)