



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 25, 2007

Ms. Stephanie L. Miller  
Assistant County Attorney  
Johnson County  
Guinn Justice Center  
204 South Buffalo Avenue, Fourth Floor, Suite 410  
Cleburne, Texas 76033

OR2007-04672

Dear Ms. Miller:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 276772.

The Johnson County Sheriff's Office (the "sheriff") received a request for a specific incident report. You state that you have provided the requestor with the front page of the incident report with the names of the complainant and victim redacted. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

---

<sup>1</sup>Although you also raise sections 552.028, 552.107, 552.111, and 552.130, you do not make any arguments in support of these statutory provisions. See Gov't Code § 552.301(1)(e) (requiring governmental body to explain the applicability of a raised exception). Therefore, we assume you have withdrawn your claim that these sections apply to any of the submitted information. Additionally, we note that although you claim that the requested information is also excepted under sections 552.023, 552.229, and 552.307, these provisions do not constitute exceptions to disclosure. Rather, section 552.023 addresses a requestor's special right of access to information that is otherwise confidential, while sections 552.229 and 552.307 are procedural in nature.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes and working papers used or developed in an investigation under this chapter or in *providing services as a result of an investigation.*

Fam. Code § 261.201(a). The submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information is within the scope of section 261.201. You indicate that the sheriff has not adopted a rule governing the release of this type of information. Accordingly, we conclude that the submitted information, including the basic “front page” information, is confidential pursuant to section 261.201 of the Family Code, and the sheriff must generally withhold the submitted report under section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, we note the existence of a polygraph examination in the submitted information. Access to information obtained during the course of a polygraph examination is governed by section 1703.306 of the Occupations Code. Section 1703.306 provides as follows:

(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 B]oard 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.

Occ. Code § 1703.306. We have marked the polygraph information that is subject to section 1703.306. We note, however, that the requestor identifies himself as the polygraph examinee's attorney. The statutory access provision in section 1703.306(a)(1) of the Occupations Code is more specific than the general protection afforded to broader categories of information under sections 261.201 of the Family Code, 552.103 of the Government Code, and 552.108 of the Government Code. Where information falls within both a specific and a general provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex.2000) ("more specific statute controls over the more general"); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Therefore, if the requestor has a right of access to his client's polygraph information under section 1703.306(a)(1), that information may not be withheld from him on the basis of 261.201, but instead must be released to the requestor.

In summary, the submitted information must generally be withheld from the requestor under section 552.101 in conjunction with section 261.201 of the Family Code. However, if the requestor has written authorization to obtain his client's polygraph information, the sheriff must release such information to him pursuant to section 1703.306(a)(1) 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Aries Solis  
Assistant Attorney General  
Open Records Division

AS/eeg

Ref: ID# 276772

Enc. Submitted documents

c: Mr. Garland D. Cardwell  
Munson, Munson, Cardwell & Keese  
123 South Travis  
Sherman, Texas 75090-5928  
(w/o enclosures)