



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 14, 2007

Ms. Julia Gannaway  
Lynn, Pham & Ross, LLP  
1320 South University Drive Suite 720  
Fort Worth, Texas 76107

OR2007-15004

Dear Ms. Gannaway:

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# 294696.

The City of Glenn Heights (the "city"), which you represent, received a request for information relating to the requestor's application to the city police department (the "department") for employment. You indicate that some of the requested information will be released. You have submitted information that the city seeks to withhold under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We also have considered the comments that we received from the requestor.<sup>1</sup> The requestor states, among other things, that he does not seek access to his entrance examination. Therefore, that information, which we have marked, is not responsive to this request for information. This decision does not address the public availability of the non-responsive information, and it need not be released.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 1701.306 of the Occupations Code, which provides in part:

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<sup>1</sup>See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

<sup>2</sup>Accordingly, we do not address the city's claim under section 552.122 of the Government Code.

(a) The [Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”)] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. *A declaration is not public information.*

Occ. Code § 1701.306(a)-(b) (emphasis added). We agree that the city must withhold the declaration that we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

You also raise section 552.101 in conjunction with section 1701.454 of the Occupations Code. Section 1701.454 governs the public availability of a “Report of Separation of Licensee,” also known as a form F-5, submitted to TCLEOSE under subchapter J of chapter 1701 of the Occupations Code. We note that the submitted form F-5’s were created prior to the effective date of the amendment of section 1701.454 by the Seventy-ninth Legislature. *See* Act of May 25, 2005, 79<sup>th</sup> Leg., R.S., ch. 1298, § 4, 2005 Tex. Gen. Laws 4094, 4096. Therefore, the form F-5’s at issue here are governed by the previous version of section 1701.454. *See id.* § 6.<sup>3</sup> Section 1701.454 previously provided as follows:

(a) A report or statement submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, 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.

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<sup>3</sup>Section 6 of the amending legislation states that “[t]he changes in law made by this Act in relation to employment termination reports apply only to an employment termination report under Subchapter J, Chapter 1701, Occupations Code, regarding a resignation or termination that occurs on or after the effective date of this Act. An employment termination report regarding a resignation or termination that occurs before the effective date of this Act is governed by the law as it existed immediately before the effective date, and that law is continued in effect for that purpose.” Act of May 25, 2005, 79<sup>th</sup> Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4094, 4096.

(b) Except as provided by this subsection, a [TCLEOSE] 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 [TCLEOSE] 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; *see also* 37 T.A.C. § 217.7 (Reporting the Appointment and Termination of a Licensee). You indicate that the department obtained the submitted form F-5's from TCLEOSE. You do not indicate that release of the information in question is permitted in this instance. Based on your representations, we agree that the city must withhold the form F-5's, which we have marked, under section 552.101 of the Government Code in conjunction with the previous version of section 1701.454 of the Occupations Code. Although you also appear to contend that section 1701.454 is applicable to the remaining information in Exhibit B, you have not demonstrated that any of that information falls within the scope of either the previous or the current versions of the statute.<sup>4</sup> We therefore conclude that the city may not withhold any of the remaining information in Exhibit B under section 552.101 in conjunction with section 1701.454 of the Occupations Code. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

Section 552.101 also encompasses section 611.002 of the Health and Safety Code. Section 611.002 governs the public availability of mental health records and provides in part:

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<sup>4</sup>As amended by the 79<sup>th</sup> Legislature, section 1701.454 provides as follows:

(a) A report or statement submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, 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 subchapter, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 provide for access to information that is made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). We have marked information in Exhibit C that is confidential under section 611.002. As the patient, the requestor has a potential right of access to that information under sections 611.004 and 611.0045. If the requestor does not have a right of access, then the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

In summary: (1) the city must withhold the marked declaration under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (2) the marked form F-5's must be withheld under section 552.101 in conjunction with section 1701.454 of the Occupations Code; and (3) the marked mental health records must be withheld under section 552.101 in conjunction with section 611.002 of the Health and Safety Code, unless the requestor has a right of access under sections 611.004 and 611.0045 of the Health and Safety Code. The rest of the submitted information must be released.

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

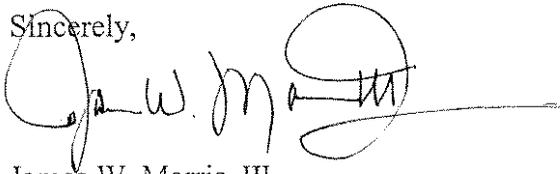
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 294696

Enc: Submitted documents

c: Mr. James Healy  
7258 Wild Wing Drive  
Fort Worth, Texas 76120  
(w/o enclosures)