



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2008

Ms. Cara Leahy White
Taylor, Olson, Adkins, Sralla, & Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2008-04549

Dear Ms. White:

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# 306556.

The Southlake Department of Public Safety (the "department"), which you represent, received two requests for information from different requestors pertaining to a named department employee. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that Exhibit C and the officer's cell phone number in Exhibit B were previously ruled upon by this office in Open Records Letter No. 2008-04186 (2008). In that ruling, we concluded that the department may withhold Exhibit C under section 552.107 of the Government Code and may withhold the cell phone number in Exhibit B under section 552.108(b)(1). Because we have no indication that the law, facts, and circumstances surrounding this prior ruling have changed, the department may continue to rely on Open Records Letter No. 2008-04186 as a previous determination, and withhold the information at issue, in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as

¹Although you raise section 552.1175 of the Government Code, the correct exception to raise for information pertaining to an employee of the governmental body is section 552.117.

was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We now address the information that was not at issue in Open Records Letter No. 2008-04186. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. Section 1703.306 of the Occupations Code 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] Board 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. You seek to withhold reports of polygraph examinations. You do not indicate that the requestors fall into any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306 (a). We note, however, that only portions of the submitted records consist of information acquired from a polygraph. Accordingly, we conclude that the department must withhold the information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code. Because the remaining information does not consist of information

acquired from a polygraph, it may not be withheld under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

We next note that a portion of the remaining information is excepted from disclosure under section 552.117(a)(2). Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, we have marked information that the city must withhold under section 552.117(a)(2) of the Government Code.

In summary, you may continue to rely on Open Records Ruling 2008-04186 and withhold Exhibit C under section 552.107 of the Government Code and the cell phone number in Exhibit B under section 552.108(b)(1). The department must withhold the information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code, and the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

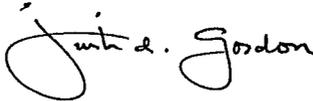
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 306556

Enc. Submitted documents

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