



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 11, 2008

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2008-12550

Dear Mr. Bounds:

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# 321901.

The City of Corpus Christi (the "city") received a request for medical evaluation forms for firefighter cadets hired May 12, 2008. 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 have reviewed the information you submitted.

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. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with the Americans with Disabilities Act (the "ADA"), 42 U.S.C. §§ 12101 *et seq.* The ADA provides that "[a] covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions." 42 U.S.C. 12112(d)(4)(B). Such information must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. *See* 42 U.S.C. 12112(d)(4)(C).

In Open Records Decision No. 641 (1996), this office addressed the ADA and stated:

Title I of the ADA and the EEOC regulations adopted pursuant to specific statutory authority provide for the confidentiality of medical condition and

history information collected from applicants and employees. . . . Section 12112(d)(4)(C) provides that information "regarding the medical condition or history of any employee" obtained as part of a work-site based health program also must be maintained on separate forms, in separate files, and be kept confidential. *See also* 29 C.F.R. § 1630.14(d)(1) (providing that this information "*shall* be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record") (emphasis added). As to information obtained from employees' job-related medical examinations or medical inquiries, the interpretive rules make clear that medical condition and medical history information so obtained is subject to the same restrictions. . . .

ORD 641 at 6. However, as this office also noted in ORD 641 with regard to confidential medical records, the ADA further provides that:

- (I) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
- (ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
- (iii) government officials investigating compliance with this chapter shall be provided relevant information on request

42 U.S.C. § 12112(d)(3)(B); *see* 29 C.F.R. § 1630.14(d)(1).

You state that the submitted information pertains to the medical conditions and histories of firefighter cadets employed by the city. You explain that the information was obtained in the course of fitness for duty examinations that were conducted to determine whether the cadets are able to perform the essential functions of their job. You inform us that the information is maintained in separate confidential medical files pursuant to the ADA. We note that the requestor does not appear to be among the categories of persons that are entitled to have access to such information. Based on your representations and our review of the information at issue, we therefore conclude that the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with the ADA. As we are able to make this determination, we do not address your other arguments against disclosure.

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). If the governmental body does not file suit over 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).

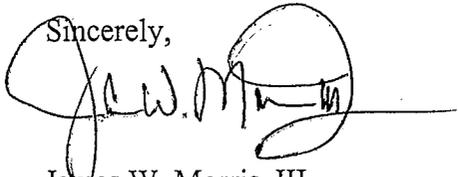
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

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

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

JWM/jh

Ref: ID# 321901

Enc: Submitted documents

c: Ms. Gracie G. Flores
Corpus Christi Firefighters' Retirement System
711 North Carancahua Suite 724
Corpus Christi, Texas 78475
(w/o enclosures)