



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2009

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2009-02811

Dear Ms. Rangel:

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# 336266.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified internal affairs investigation and a specified probable cause affidavit. You state that you have released some of the information pertaining to the internal affairs investigation to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted the probable cause affidavit. Therefore, to the extent this affidavit existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 1703.306 of the Occupations Code, which provides in relevant part:

¹Although you also raise section 552.108 of the Government Code for the information in Exhibit D, you have not submitted Exhibit D for our review. Thus, we do not address your claims under section 552.108. *See* Gov't Code § 552.301(e)(1)(D).

(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(a), (b). Section 1703.306(a) makes the information acquired from a polygraph examination confidential. However, in this instance, the requestor is the polygraph examinee. Thus, the sheriff has the discretion to release the requestor's polygraph information to him. Otherwise, the sheriff must withhold the information we have marked and the submitted DVD under section 552.101 in conjunction with section 1703.306 of the Occupations Code. As you raise no further exceptions for the remaining information, it must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/eeg

Ref: ID# 336266

Enc. Submitted documents

c: Requestor
(w/o enclosures)