



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2009

Mr. Whitt L. Wyatt
Assistant City Attorney
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083

OR2009-07995

Dear Mr. Wyatt:

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# 345758 (Richardson file no. 09-189).

The Richardson Police Department (the "department") received a request for information pertaining to a specified application for employment. You indicate that twelve pages have been released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 section encompasses information protected by other statutes, such as section 1703.306 of the Occupations Code, which provides:

(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;

...

(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.

Occ. Code § 1703.306(a)(1), (b). You claim the submitted polygraph examination results report is excepted under section 1703.306. We agree this information is generally within the scope of section 1703.306. However, the information pertains to a polygraph examination of the requestor. Thus, the department has the discretion to release the requestor's polygraph examination information pursuant to section 1703.306(a)(1) of the Occupations Code. *See* Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permitted, but did not require, polygraph examination results to be disclosed to examinees). Otherwise, the department must withhold the polygraph examination information under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code.

Section 552.101 also encompasses chapter 411 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We have marked the information that constitutes CHRI generated by TCIC and NCIC and is confidential under section 411.083. This information must be withheld under section 552.101 of the Government Code.¹ However, none of the remaining information consists of CHRI.

¹We note the requestor can obtain his own CHRI directly from DPS. Gov't Code § 411.083(b)(3).

In summary, the department has the discretion to release the requestor's polygraph examination information pursuant to section 1703.306(a)(1) of the Occupations Code. If the department decides not to release this information, it must be withheld under section 552.101 in conjunction with section 1703.306(a). The department must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. As you raise no other exceptions to disclosure, the remaining information must be released.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 345758

Enc. Submitted documents

cc: Requestor
(w/o enclosures)