



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2009

Ms. Jenny Gravley
Taylor Olson Adkins Sralla Elam, L.L.P.
Attorney for City of Azel
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2009-11352

Dear Ms. Gravley:

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# 356705.

The Azle Police Department (the "department"), which you represent, received a request for a named officer's "psychological and polygraph." You state the department does not have the requested polygraph information.¹ You claim the remaining requested 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, including section 611.002 of the Health and Safety Code, which governs the public availability of mental health records. Section 611.002 provides in part:

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

(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.

Health & Safety Code § 611.002(a); *see id.* § 611.001 (defining “patient” and “professional”). Upon review, we agree the department must withhold the mental health records you have marked under section 611.002 of the Health and Safety Code.

The remaining information consists of a L-3 (Declaration of Psychological and Emotional Health) form that is excepted from disclosure pursuant to section 552.101 in conjunction with section 1701.306 of the Occupations Code. Section 1701.306 provides as follows:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education] 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 the commission. A declaration is not public information.

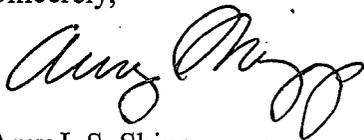
Occ. Code § 1701.306(a), (b). Upon review, we agree the declaration you have marked is confidential under section 1701.306 of the Occupations Code and must be withheld under section 552.101 of the Government Code.

In summary, the department must withhold the mental health records you have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The department also must withhold the L-3 declaration you have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 356705

Enc. Submitted documents

cc: Requestor
(w/o enclosures)