



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 24, 2009

Mr. James D. Parker  
Knight & Partners  
Attorneys for City of Bartlett  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2009-16695

Dear Mr. Parker:

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# 367221.

The City of Bartlett (the "city"), which you represent, received a request for information pertaining to a named police officer. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor contends, and you acknowledge, that the city failed to comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information that overcomes the presumption of openness. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision

No. 630 (1994). A compelling reason exists when third-party interests are at stake, or when information is confidential by law. *See* Open Records Decision No. 150 (1977). As sections 552.101 and 552.102 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the information at issue.

The submitted documents consist of the named officer's L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes such as section 1701.306 of the Occupations Code, which provides as follows:

(a) The commission 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.

*Id.* § 1701.306(a), (b). Therefore, the city must withhold the submitted L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.<sup>1</sup>

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.

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<sup>1</sup>As our ruling is dispositive for this information, we do not address your arguments against its disclosure.

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](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, toll free, at (888) 672-6787.

Sincerely,



Paige Lay  
Assistant Attorney General  
Open Records Division

PS/cc

Ref: ID# 367221

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)