



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 25, 2014

Mr. Stephen R. Alcorn  
Assistant City Attorney  
City of Grand Prairie  
P.O. Box 534045  
Grand Prairie, Texas 75053-4045

OR2014-03452

Dear Mr. Alcorn:

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# 515056.

The City of Grand Prairie (the "city") received a request for the requestor's test results, reports, assessments, and documents related to his psychological evaluation and polygraph examination. We understand you to claim the submitted information is confidential. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses information that other statutes make confidential, including section 1703.306 of the Occupations Code, which provides in part:

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

(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. Upon review, we find the information we have marked constitutes information acquired from the requestor's polygraph examination. The marked polygraph information is confidential under section 552.101 in conjunction with section 1703.306. We note that the city has the discretion to release the marked information to the requestor pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees). Otherwise, the city must withhold the information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Next, we note the remaining information includes mental health records pertaining to the requestor. Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code, which provides in pertinent part:

(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.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Upon review, we find the information we have marked consists of mental health records for purposes of chapter 611 of the Health and Safety Code. Accordingly, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 611.002(a) of the Health and Safety Code.

In summary, the marked polygraph information is confidential under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code, but the city has the discretion to release this information to the requestor pursuant to section 1703.306(a)(1) of the Occupations Code. The city must withhold the mental health records we have marked under section 552.101 of the Government Code in conjunction

with 611.002(a) of the Health and Safety Code. The remaining information must be released.<sup>2</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.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rashandra C. Hayes  
Assistant Attorney General  
Open Records Division

RCH/dls

Ref: ID# 515056

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that the requestor has a special right of access to some of the information being released in this instance. Gov't Code §§ 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). If the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.