



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2014

Ms. Andrea D. Russell
Counsel for City of Burleson
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Center Place, Suite 200
Fort Worth, Texas 76107

OR2014-13723

Dear Ms. Russell:

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# 531848.

The City of Burleson (the "city"), which you represent, received a request for information pertaining to a named individual. You state the city will release some information to the requestor. You claim 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. Section 552.101 encompasses information made confidential by statute, such as section 1701.306 of the Occupations Code, which makes L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by Texas Commission on Law Enforcement ("TCOLE") confidential. Section 1701.306 provides the following:

(a) [TCOLE] may not issue a license to a person 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 blood test or other medical test.

(b) An agency hiring a person for whom a license 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 [TCOLE]. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). Upon review, the city must generally withhold the L-2 form we marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. However, we find no portion of the remaining information at issue is confidential pursuant to section 1701.306, and the city may not withhold any of the remaining information on that basis under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides in relevant part:

(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[.]

Id. § 1703.306(a)(1). Upon review, we agree Exhibit D constitutes information acquired from a polygraph examination. However, in this instance, the requestor has provided a signed authorization of release of records from the individual whose information is at issue. Thus, the city has the discretion to release the polygraph information pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permitted, but did not require, examination results to be disclosed to examinees). Otherwise, the city must generally withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code. Section 611.002 governs the public availability of mental health records and provides:

(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); *see id.* § 611.001 (defining “patient” and “professional”). Upon review, we find the information we marked under section 611.002 consists of mental health records. Therefore, the city must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. However, we find none of the remaining information constitutes mental health records or information obtained from mental health records for the purposes of section 611.002 of the Health and Safety Code. Thus, no portion of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

The city also asserts the requested information can be provided to the requestor through an intergovernmental transfer. We note the requestor in this instance is a representative of the Fort Worth Police Department. This office has concluded information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. In adherence to this policy, this office has concluded information may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655, 414 (1984). However, the transfer of confidential information from one governmental body to another is prohibited where the relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute’s enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body).

Section 611.002 of the Health and Safety Code and section 1703.306 of the Occupations Code have their own release provisions. Therefore, we conclude the information we marked

under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code and Exhibit D may not be provided to the requestor through an intergovernmental transfer. However, section 1701.306 of the Occupations Code does not have specific release provisions governing public release of information. Therefore, pursuant to the intergovernmental transfer doctrine, the city has the discretion to release this information to the requestor.

In summary, the city must withhold (1) the information we marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (2) Exhibit D under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code; and (3) the information we marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The remaining information must be released. However, the city may exercise its discretion under the intergovernmental transfer doctrine to release the information we marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code and the information subject to section 1703.306 of the Occupations Code because the requestor has provided a signed authorization of release of records from the individual whose information is at issue.¹

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, 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

¹We note the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party's representative, solely on grounds that information is considered confidential by privacy principles).

Ref: ID# 531848

Enc. Submitted documents

c: Requestor
(w/o enclosures)