



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2016

Mr. John P. Beauchamp
General Counsel
Texas Commission on Law Enforcement
6330 East Highway 290, Suite 200
Austin, Texas 78723

OR2016-14917A

Dear Mr. Beauchamp:

This office issued two rulings to the Texas Commission on Law Enforcement (the "commission") on June 30, 2016, and July 22, 2016. We have examined these rulings and determined we will correct Open Records Letter No. 2016-14917 (2016), which was issued on June 30, 2016, and we will withdraw the second ruling issued on July 22, 2016. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for both of the previously-issued decisions. Your request was assigned ID# 619007.

The commission received a request for information pertaining to a named individual. The commission claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the commission only submitted F-5 forms. We assume, to the extent any additional responsive information existed when the commission received the request for information, the commission has released it to the requestor. If not, then the commission must do so immediately. *See id.* §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

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 section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

- (a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.
- (b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The submitted information contains F-5 Separation of Licensee forms that were created after the effective date of the amendment of section 1701.454 by the Seventy-ninth Legislature. *See* Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 4, 2005 Tex. Gen. Laws 4094, 4096. These forms were submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. The forms do not reflect the named officer to whom these forms apply was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the commission must withhold these submitted F-5 forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

The remaining information consists of F-5 forms that were created prior to the effective date of the amendment of section 1701.454 by the Seventy-ninth Legislature. *See id.* Thus, these F-5 forms are governed by the previous version of section 1701.454.¹ *See id.* § 6. Former section 1701.454 provides as follows:

- (a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under [the Act] unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.
- (b) Except as provided by this subsection, a commission member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the

¹Section 6 of the amending legislation states, “[t]he changes in law made by this Act in relation to employment termination reports apply only to an employment termination report under Subchapter J, Chapter 1701, Occupations Code, regarding a resignation or termination that occurs on or after the effective date of this Act. An employment termination report regarding a resignation or termination that occurs before the effective date of this Act is governed by the law as it existed immediately before the effective date and that law is continued in effect for that purpose.” Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4094, 4096.

commission employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by commission that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

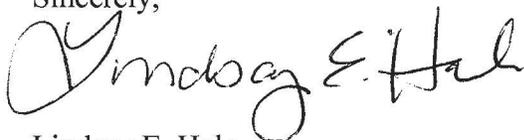
Occ. Code. § 1701.454 (repealed 2005). Upon review, we find the remaining F-5 forms are not subject to release under the provisions of former section 1701.454. Accordingly, the commission must withhold the remaining F-5 forms under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code.

In summary, the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code and former section 1701.454 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.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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/sdk

Enc: Submitted documents

Ref: ID# 619007

c: Requestor
(w/o enclosures)