



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Mr. G. Chadwick Weaver
Assistant City Attorney
City of Midland
P. O. Box 1152
Midland, Texas 79702-1152

OR95-824

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34288.

The City of Midland (the "city") received a request for a certain investigative report. Based on section 552.101 of the Government Code in conjunction with V.T.C.S. article 4413(29cc), section 19A(b), you seek to withhold from required public disclosure portions of this report that pertain to a polygraph examination.¹

Section 552.101 excepts from required public disclosure information that is confidential by law, including information that is confidential by statute. Section 19A(b) of V.T.C.S. article 4413(29cc) reads as follows:

¹Portions of the report that you say the city will release contain information that is protected from required public disclosure based on the common-law right to privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977); Gov't Code § 552.101. You say the individual whose privacy rights are implicated by the release of the information has consented to the release of the information to the requestor. The Open Records Act provides for the release of private information excepted from disclosure to the general public to the person whose privacy rights are implicated by the release of the information if that person has consented to such release. See Gov't Code § 552.023. Such consent must be in writing and signed by the specific person or the person's authorized representative. See *id.* § 552.229. Thus, assuming the consent here is in compliance with section 552.229 of the Government Code, the city must release the private information to the requestor.

Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

Subsection (b) prohibits the city from disclosing "information acquired from the [polygraph] examination," except as provided by subsection (d) of section 19(A). We agree that the information you marked is within the protection of subsection (b) as "information acquired from the [polygraph] examination." See Open Records Decision Nos. 562 (1990) at 11, 316 (1982) at 3. Subsection (d) provides as follows:

A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

This provision permits the city to release polygraph information to certain persons described in subsection (c). Subdivisions (1) through (5) of subsection (c) describe the following persons:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person, firm, corporation, partnership, business entity, or governmental agency that requested the examination;
- (3) members or their agents of governmental agencies such as federal, state, county, or municipal agencies that license, supervise, or control the activities of polygraph examiners;
- (4) other polygraph examiners in private consultation, all of whom will adhere to this section; or
- (5) others as may be required by due process of law.

We do not believe that the requestor here is one of the persons described in subsection (c) of section 19(A). Thus, the requestor is not entitled to the polygraph information pursuant to subsection (d) of section 19(A). Therefore, the city must not release to the requestor the polygraph information pursuant to section 552.101 in conjunction with V.T.C.S. article 4413(29cc), section 19A(b).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 34288

Enclosures: Submitted documents

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(w/o enclosures)