



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 30, 1996

Ms. Elizabeth Elam
Fielding, Barrett & Taylor, L.L.P.
3400 BankOne Tower
500 Throckmorton
Fort Worth, Texas 76102-3821

OR96-0831

Dear Ms. Elam:

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# 38093.

The City of Mansfield (the "city") received a request for (1) job applications for all police officers employed by the Mansfield Police Department; (2) letters relating to commendations, honors, and disciplinary actions for each police officer employed by the department; and (3) information regarding the employment of Officer Doug Fetters. The city submitted to this office for review samples of the documents requested.¹ Subsequently this office reviewed and issued Open Records Letter No. 95-1567 (1995), pertaining to all the documents except those possibly subject to the Americans with Disabilities Act (the "ADA"), 42 U.S.C. § 12101 *et seq.* In that letter, we concluded that the ADA issues warranted a more thorough analysis than is normally possible in the limited scope of an informal letter. The ADA issues were set aside to await an ADA analysis addressed in Open Records Decision No. 641 (1996).² With the subsequent issuance of Open Records Decision No. 641 (1996), we now will consider the ADA issues presented in the documents submitted to this office.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²Referred to as RQ# 753 in Open Records Letter No. 95-1567 (1995) at 3.

Although you did not raise any ADA claims, the Office of the Attorney General will consider mandatory exceptions like section 552.101 on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Information is confidential under section 552.101 when it is made confidential by federal statute or administrative regulations enacted pursuant to statutory authority. Open Records Decision No. 476 (1987) at 5. If the records at issue are confidential under section 552.101 in conjunction with Title I of the ADA, the records may be released only in accordance with provisions of that federal law. *Id.*

Title I prohibits discrimination in employment and limits the extent to which an employer subject to the ADA may require applicants and employees to provide information concerning disabilities.³ We note that the United States Equal Employment Opportunity Commission (the "EEOC") has, pursuant to its statutory authority, *see* 42 U.S.C. § 12116, promulgated regulations to provide guidance in interpreting Title I of the ADA, *see* 29 C.F.R. pt. 1630. This office has previously relied upon the EEOC regulations in construing Title I of the ADA. Attorney General Opinion DM-124 (1992).

The ADA prohibits discrimination, generally, on the basis of disability. *Id.* § 12101 *et seq.* Open Records Decision No. 0641 (1996) at 2. The ADA prohibition against discrimination includes restrictions as to the use and disclosure of medical examinations and medical information. *Id.* § 12112(d)(1). These restrictions vary depending on whether an applicant is in the job application phase, the conditional job offer phase, or has been hired as an employee. *Id.* § 12112 (d)(2)-(4).

You submitted to this office for review a personal history form, various personnel complaint forms, pages 2 to 9 of an untitled form coupled with an Employment Eligibility Verification form, and various warning forms. The personal history form contains medical history inquiries which list a number of types of medical conditions, including physical handicaps and chronic diseases, which are filled-in as applicable.⁴ The personal history form allows an applicant to identify a disability and to detail

³The ADA does not preempt federal, state, or local law providing greater or equivalent protection than that granted under the ADA. *Id.* § 1630.1(c); *see id.* pt. 1630 app. at 400 (1995) (section 1630.1(b) and (c) Applicability and Construction). Individuals who have been discriminated against may pursue an ADA claim in addition to any applicable state claim. *Id.* pt. 1630 app. at 400 (1995) (section 1630.1(b) and (c) Applicability and Construction). Section 21.051 of the Texas Labor Code prohibits employment discrimination based on an individual's disability.

⁴You have not indicated that this information is being collected pursuant to federal regulations under the Rehabilitation Act, which allow collection of information about disabilities at the application stage. *Id.* § 1630.1. We note that the Rehabilitation Act provides for consistency with ADA standards. *See* 29 U.S.C. §§ 791(g) (providing that standards used to determine employment discrimination are same as ADA employment provisions), *Id.* § 793(e) (providing that complaints be dealt with in manner that prevents imposition of conflicting standards under Rehabilitation Act and ADA), *Id.* § 794(d) (providing that standards for employment discrimination are same as ADA employment provisions).

whether and what type of accommodation would be needed. The untitled form on page three contains a list of various physical and mental conditions which the employee is asked to check and explain if he or she has one or more of the conditions. Both of the forms at issue seek information about an individual's medical history and medical condition.⁵

The city, an employer subject to Title I of the ADA, *see* 42 U.S.C. § 12111(5), collects and maintains the records at issue. An individual filling out the personal history questionnaire is providing information about his or her medical condition and medical history. The ADA provides that information about medical conditions and medical histories of applicants or employees must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as confidential medical records. Since the information on these forms is made confidential under section 12112(d) of the ADA, it may be released only as provided under that section.⁶ None of the information provided by the requestor appears to place the inquiry within the exceptions to confidentiality.⁷ Open Records Decision No. 064 (1996) at 6-7. The city must withhold the marked provisions within the documents provided and also used the marked provisions as a guide for withholding information in the remaining documents.

We are resolving this matter with an 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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Jafel I. Monteros
Assistant Attorney General
Open Records Division

⁵The information at issue was collected from applicants, some of whom are current and former City of Mansfield employees, so that the information at issue concerns both applicants and former or current employees.

⁶This opinion does not address the confidentiality of medical records under state law. It also does not address the confidentiality of information collected prior to the effective date of the ADA or information collected outside the scope of the ADA provisions.

⁷Section 12112(d)(3)(B) of Title 42 of the United States Code provides that information regarding medical condition or medical history may be disclosed as follows: (i) supervisors and managers *maybe informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations*; (ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and (iii) government officials investigating compliance with this Act shall be provided relevant information on request.

JIM/rho

Ref.: ID# 23309
ID# 38093

Enclosures: Confidentiality list
Marked documents

cc: Ms. Kristin N. Sullivan
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(w/Confidentiality list)