



## Office of the Attorney General

State of Texas

September 15, 1997

DAN MORALES  
ATTORNEY GENERAL

Mr. Kevin Kapitan  
Office of the Police Legal Advisor  
350 West Belknap  
Fort Worth, Texas 76102

OR97-2051

Dear Mr. Kapitan

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 108483.

The City of Fort Worth Police Department (the "department") received a request from a police department for the applicant's psychological evaluation and test. The requested records have been submitted to this office for review. You assert that the information at issue is protected from disclosure pursuant to section 143.089(g) of the Local Government Code. Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

You have informed this office that the requestor is not a police officer employed by the department, so the records at issue are not part of a section 143.089(g) file. They are thus not made confidential under section 143.089(g).

We have reviewed the records at issue, which include tests and interview information used as part of a psychological evaluation of the applicant. Chapter 611 of the Health and Safety Code generally governs access to mental health records. Section 611.002(a) of the Health and Safety Code provides that: "[C]ommunications 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."

You assert that chapter 611 is inapplicable because the requestor “does not enjoy the traditional relationship with the psychological professional as would arise if care, counseling or treatment was being sought by the applicant as a patient. This is particularly evident since the interface with a psychological professional is statutorily mandated for all applicants”.

Section 611.001(1) includes in its definition of a “patient” for purposes of chapter 611, someone who is “interviewed by a professional for diagnosis, *evaluation*, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction.”

(Emphasis added.) From the information provided, it appears that the psychologist who interviewed the applicant is a “professional” as defined by section 611.001. The requestor was interviewed for the purpose of evaluating his emotional and mental condition or fitness to be a police officer.

Section 611.002 provides that “[c]ommunications 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.” However, section 611.0045(a) provides that “[e]xcept as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient.” Because the requestor is the “patient” for purposes of section 611.0045, he is entitled to access to the records at issue subject to the conditions of section 611.0045.

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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 108483

Enclosures: Submitted documents

cc: Mr. Jimmy Wayne Johnson  
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Fort Worth, Texas 76103  
(w/o enclosures)

