



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 29, 1997

Ms. Kate Herrington
Open Records Coordinator
Texas Department of Mental Health
and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR97-2401

Dear Ms. Herrington:

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#110470.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for the results of any polygraph tests given a named employee of the department. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure information that is deemed confidential, including information that is made confidential by statute. Section 19A of article 4413(29cc), V.T.C.S., which governs the release of polygraph examinations, provides in pertinent part:

(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information acquired from a polygraph examination to:

(1) the examinee or any other person specifically designated in writing by the examinee;

¹In your original letter brief, you also assert an exception under section 552.103. Because you have not indicated how this section applies to except the requested information from disclosure, we will not consider this claimed exception. See Gov't Code § 552.301(b).

(2) the person . . . 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.

(d) 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.

(e) The board or any other governmental agency that acquires information from a polygraph examination under Subdivision (3) of Subsection (c) of this section shall keep the information confidential.

Consequently, the department is barred from releasing the results of any polygraph examination except as specifically provided by section 19A of article 4413(29cc), V.T.C.S. *See also* Open Records Decision No. 430 (1985). Therefore, the department must not release the document you submitted to this office for review as Exhibit "A" under section 552.101 in conjunction with section 19A of article 4413(29cc), V.T.C.S.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We find that the document you submitted as Exhibit "B" reveals the client's confidential communications. We further find that the document denoted as Exhibit "C" reflects the attorneys' legal advice or opinions. Therefore, we conclude that the department may withhold these documents from disclosure under section 552.107 of the Government Code.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/ulg

Ref.: ID# 110470

Enclosures: Submitted documents

cc: Ms. Karen K. Johnson
Attorney at Law
P.O. Box 9411
Austin, Texas 78766
(w/o enclosures)