



July 12, 2000

Ms. Pamela Smith
Assistant General Counsel
Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2000-2619

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137024.

The Texas Department of Public Safety (the "department") received a request for all records and tangible items regarding a specified individual. In addition, the requestor seeks all documents relating to a polygraph examination of this same individual. The responsive information consists of a polygraph report and examination. You claim that this submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body, "must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301(b). If the governmental body fails to do this, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

Although you do not state the date that the department received the original request for information, the copy of the original request that you submitted to this office shows a date stamp of April 17, 2000. Accordingly, the department's deadline for requesting an attorney general decision and stating the applicable exceptions to disclosure expired ten business days later on May 1, 2000. *See* Gov't Code § 552.301(b). On the ninth business day following the department's receipt of the request for information, April 28, 2000, the department contacted the requestor and asked her to clarify the request. Accordingly, on April 28, 2000,

the 10-day period was tolled. Open Records Decision No. 663 at 7 (1999). On May 5, 2000, the department received the requestor's clarification, and consequently, the 10-day deadline resumed on this date. *Id.* Accordingly, the department had until May 8, 2000 to timely request an attorney general decision. However, this office did not receive your request for a decision until May 9, 2000.¹ Therefore, the department missed its ten-day deadline as prescribed by section 552.301(b). Consequently, absent a compelling reason to withhold the requested information, the information must be released.

This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 (1977). Here, you claim that the information at issue is confidential under section 552.101 in conjunction with section 1703.306 of the Occupations Code. Accordingly, we will consider your arguments for withholding the requested information. *See* Open Records Decision No. 586 (1991) (when a governmental body fails to timely seek an attorney general decision under the Public Information Act, the need of another governmental body may provide a compelling reason for withholding the requested information).

Section 552.101 excepts from required public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions such as section 1703.306 of the Occupations Code. Section 1703.306(a) generally provides:

A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person

Occ. Code § 1703.306. While section 1703.306 provides various exceptions to confidentiality, none of the exceptions applies here. Accordingly, the department must withhold the submitted polygraph examination results and report under section 1703.306 as encompassed by section 552.101 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

¹The department sent its request for a decision via interagency mail and via facsimile.

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 137024

Encl: Submitted documents

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(w/o enclosures)