



December 20, 2000

Ms. Kathy L. McMullen  
City Secretary  
City of Pleasanton  
Box 209  
Pleasanton, Texas 78064

OR2000-4769

Dear Ms. McMullen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142504.

The City of Pleasanton (the "city") received a request for information relating to an incident that the requestor identified by date, time, and street address. You inform us that the city will release some of the information that it deems to be responsive to the request. You claim that other responsive information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.<sup>1</sup>

Initially, we must address the city's failure to comply with section 552.301 of the Government Code in asking for this decision. Section 552.301 prescribes the procedures that a governmental body must follow in asking for an attorney general decision as to whether requested information may be withheld from the public. Section 552.301(b) provides that "[a] governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written [information] request." Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301 in requesting an attorney general

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<sup>1</sup>We note that you redacted portions of the records in question prior to submitting them to this office. In the future, you should bracket, underline, or otherwise label any information that the city seeks to withhold from public disclosure, so that this office is able to review that information. *See* Gov't Code §§ 552.301(e)(2), .302.

decision, the requested information is presumed to be subject to public disclosure and must be released unless there is a compelling reason to withhold any of that information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380-81 (Tex. App.--Austin 1990, no writ).

In this instance, you inform us that the city received the written request for information on September 14. You submitted the city's request for this decision on October 12. Thus, the city failed to comply with section 552.301(b) of the Government Code in requesting this decision. Therefore, the information in question is presumed to be subject to disclosure and must be released, unless there is a compelling reason to withhold any of that information from the public. Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380-81 (Tex. App.--Austin 1990, no writ). As a general rule, the presumption of openness under section 552.302 can be rebutted by a showing that the information at issue is deemed to be confidential under some other source of law or that the interests of third parties are at stake. *See Open Records Decision No. 630 at 3 (1994)*. Thus, a claim that information is confidential under sections 552.101 or 552.102 of the Government Code can provide a compelling reason sufficient to overcome the operation of section 552.302.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is encompassed by statutory confidentiality provisions. You claim that some of the requested information is confidential under section 552.101 in conjunction with the Medical Practice Act, as codified at subtitle B of title 3 of the Occupations Code. *See Occ. Code § 151.001*. Section 159.002 of the Occupations Code provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). The Medical Practice Act includes provisions that govern the disclosure of information that it encompasses. *See Occ. Code §§ 159.003, .004, .005, .006*. This office has determined that in governing access to a specific subset of information, the Medical Practice Act prevails over the more general provisions of the Public Information

Act.<sup>2</sup> Therefore, the medical records that we have marked may be released only as permitted by the Medical Practice Act.

Chapter 1701 of the Occupations Code governs the Texas Commission on Law Enforcement Officer Standards and Education. Section 1701.306 of the Occupations Code provides in relevant part:<sup>3</sup>

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

Occ. Code § 1701.306(a), (b) (emphasis added). We have marked the information that the city must withhold under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Chapter 611 of the Health and Safety Code provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002 provides in relevant part:

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<sup>2</sup>See Open Records Decision No. 598 (1991). The Seventy-sixth Legislature repealed the predecessor statute, article 4495b of Vernon's Texas Civil Statutes, in enacting the Occupations Code. See Act of May 13, 1999, 76<sup>th</sup> Leg., R.S., ch. 388, §§ 6, 7, 1999 Tex. Gen. Laws 1431, 2439-40. The legislation was a non-substantive codification.

<sup>3</sup>The Seventy-sixth Legislature enacted section 1701.306 of the Occupations Code and repealed section 415.057 of the Government Code without substantive change.

(a) Communications 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.

Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). One of the submitted documents is confidential under section 611.002. The city may release that document, which we have marked, only as provided by sections 611.004 and 611.0045 of the Health and Safety Code.

You also claim that responsive information relating to a discharge from military service is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) protects “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” The privacy that section 552.102(a) provides to personnel records corresponds to the protection that section 552.101 provides in conjunction with the common law right to privacy. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld under section 552.101 in conjunction with common law privacy when (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) there is no legitimate public interest in its disclosure. *Industrial Found.*, 540 S.W.2d at 685. Employee privacy under section 552.102(a) is narrower than common law privacy under section 552.101, however, because of the greater legitimate public interest in matters involving public employees. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.--Austin 1983, writ ref’d n.r.e.); Open Records Decision Nos. 473 at 3 (1987), 444 at 3-4 (1986), 423 at 2 (1984). Generally, section 552.102(a) protects employee information from disclosure only when the information in question reveals “intimate details of a highly personal nature.” *See* Open Records Decision No. 423 at 2 (1984). Having reviewed the document for which the city claims an exception under section 552.102, we conclude that section 552.102 does not protect that information from disclosure. Accordingly, the responsive military discharge record must be released to the requestor.

We note, however, that in releasing the military discharge record and one other document that you submitted, the city must withhold social security number and other personal information under section 552.117 of the Government Code. Section 552.117(2) excepts from disclosure the home address, home telephone number, or social security number of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, or information

that reveals whether the peace officer has family members, regardless of whether the officer complies with section 552.024 of the Government Code. We have marked the information that is excepted from disclosure under section 552.117(2).

In summary, the city may release the medical records that we have marked only as permitted by the Medical Practice Act. We also have marked information that is confidential under section 1701.306 of the Occupations Code and section 611.002 of the Health and Safety Code and personal information that is excepted from disclosure under section 552.117(2) of the Government Code. The rest of the submitted information is not excepted from disclosure and must be released to the requestor.

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 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).

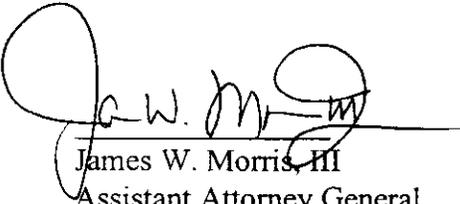
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/er

Ref: ID# 142504

Encl. Submitted documents

cc: Mr. Ted A. Ross  
Texas Civil Rights Project  
2212 East Martin Luther King Boulevard  
Austin, Texas 78702-1344  
(w/o enclosures)