



January 4, 2002

Mr. Joe Jackson
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2002-0054

Dear Mr. Jackson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156808.

The City of College Station Police Department (the "department") received two requests for information relating to a particular police officer, including his personnel file, payroll records, and sustained internal affairs complaints. You state that some of the requested information is being made available to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. Chapter 1703 of the Occupations Code codifies the Polygraph Examiners Act. *See* Occ. Code § 1703.001. Section 1703.306 of the Occupations Code provides as follows:

(a) 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 other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Id. § 1703.306. You state that the submitted documents contain information relating to a polygraph examination. The requestor is not a person to whom section 1703.306 grants access to this information. We have marked the information that the department must withhold under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 also encompasses the common-law right of privacy. Information must be withheld under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency compiles criminal history information concerning a particular individual, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). Therefore, to the extent that the submitted records include any criminal history information relating to this officer that the department compiled, the department must withhold that information under section 552.101 in conjunction with common-law privacy.

Certain kinds of personal financial information also are protected by common-law privacy under section 552.101. In prior decisions, this office has determined that although financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992) (TexFlex benefits), 545 at 3-5 (1990) (deferred

compensation plan), 523 at 3-4 (1989) (certain financial information contained in loan files of veterans participating in Veterans Land Board programs), 373 at 3-4 (1983) (certain financial information contained in housing rehabilitation grant application files). We have marked the personal financial information that the department must withhold under section 552.101 in conjunction with common-law privacy.

You also raise section 552.117 of the Government Code. Under section 552.117(2), the department must withhold a peace officer's current and former home addresses and telephone numbers, the officer's social security number, and information that reveals whether the officer has family members, regardless of whether the peace officer has complied with section 552.024 of the Government Code. You inform us that this officer is a peace officer under article 2.12 of the Code of Criminal Procedure. We have marked the information that you must withhold under section 552.117(2).

Section 552.130 of the Government Code excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). The department must withhold a Texas driver's license number under section 552.130.

In summary, some of the submitted information is confidential under section 1701.306 of the Occupations Code and the common-law right of privacy. The department must withhold that information under section 552.101 of the Government Code. The department also must withhold the officer's home addresses and telephone numbers, social security number, and information that reveals whether the officer has family members under section 552.117(2). A Texas driver's license number must be withheld under section 552.130. The remaining information must be released.

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).

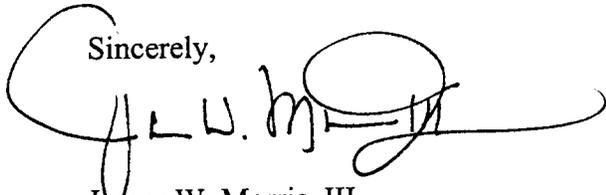
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', written in a cursive style.

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

JWM/sdk

Ref: ID# 156808

Enc: Marked documents

c: Mr. Pat Williams
Attorney at Law
The Kirby Mansion
2000 Smith Street
Houston, Texas 77002
(w/o enclosures)