



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 31, 2004

Mr. James L. Hall  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2004-2587

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198403.

The Texas Department of Criminal Justice (the "department") received a request for all information pertaining to a specified department inmate. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.108, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that portions of the submitted information constitute results of polygraph examinations that are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.<sup>1</sup> Pursuant to section 1703.306, information acquired from a polygraph examination may not be disclosed, unless it falls into one of that section's narrow exceptions. Section 1703.306 provides in part:

- (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:

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

- (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.

Occ. Code § 1703.306(a). Based on your arguments and our review of the submitted information, we agree that portions of this information were acquired from polygraph examinations. However, we note that some of this information was acquired from polygraph examinations of the requestor's client and that the client specifically designated in writing that the requestor was authorized to obtain this information. Accordingly, we conclude that these particular portions of the submitted information are not excepted from disclosure pursuant to section 552.101 in conjunction with section 1703.306 of the Occupations Code and must be released to the requestor. We have marked these particular portions of the submitted information for your review. The department must withhold the other portions of the submitted information that were acquired from polygraph examinations pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

You also claim that the remaining submitted information is excepted from disclosure pursuant to section 552.134 of the Government Code. Section 552.134 pertains to information about inmates of the department and provides in pertinent part:

- (a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.029 of the Government Code states:

Notwithstanding Section 508.313 or 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

....

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8). We note that section 552.134 is explicitly made subject to section 552.029 of the Government Code. Pursuant to section 552.029(8), basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to disclosure.

You state, and the submitted information reflects, that the information concerns inmates confined in facilities operated by or under contracts with the department. Thus, section 552.134 is applicable to the remaining submitted information. We note, however, that the remaining submitted information contains information regarding alleged crimes involving inmates and incidents involving the use of force. As you acknowledge, basic information regarding these types of incidents is subject to disclosure under section 552.029 of the Government Code. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Accordingly, we conclude that, with the exception of basic information that is subject to section 552.029, the department must withhold the remaining submitted information pursuant to section 552.134 of the Government Code.<sup>2</sup>

We note, however, that portions of the basic information are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. Section 552.101 also encompasses information that is protected from disclosure by the common-law right to privacy. Information is protected from disclosure by the common-law privacy if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683.

This office has found that the following types of information are also protected from disclosure by the common-law right to privacy: some kinds of medical information or

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<sup>2</sup> Based on this finding, we do not reach your section 552.108 or section 552.117 claims, except to note that basic information about an alleged crime is also not excepted from disclosure under section 552.108 of the Government Code. *See* Gov't Code § 552.108(c); *see also Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Based on our review of the basic information, we have marked the portions of this information which identify alleged victims of sexual assault that must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The department must release the remaining basic information to the requestor pursuant to section 552.029(8) of the Government Code.<sup>3</sup>

In summary, the department must release to the requestor the information that we have marked for release pursuant to section 1703.306 of the Occupations Code. The department must withhold the other portions of the submitted information that were acquired from polygraph examinations pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. With the exception of basic information that is subject to section 552.029, the department must withhold the remaining submitted information pursuant to section 552.134 of the Government Code. The department must also withhold the portions of the basic information which identify alleged victims of sexual assault, which we have marked, pursuant to section 552.101 in conjunction with the common-law right to privacy. The department must release the remaining basic information to the requestor pursuant to section 552.029(8) 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 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.

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<sup>3</sup> We note that although other portions of the basic information would normally also be excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy, these portions pertain to the requestor's client. Thus, in this particular instance, the department must release this particular information to the requestor. *See* Gov't Code § 552.023 (providing special right of access to person or person's authorized representative to information when only basis for excepting information from disclosure involves protection of person's privacy interest); *see also* Open Records Decision No. 481 (1987). We note, however, that if the department receives another request for this same information from a different requestor, the department should again seek a decision from us before releasing this particular information to such a requestor.

*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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 198403

Enc. Marked documents

c: Mr. Frank P. Hernandez  
716 Wayne Street  
Dallas, Texas 75223  
(w/o enclosures)