



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2004

Mr. Jerry Bruce Cain
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR2004-2642

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 198666.

The City of Laredo Police Department (the "department") received a request for copies of the requestor's job application package and the City of Laredo's policy regarding "hiring an applicant for any position with the City of Laredo." You indicate that you have released or will release much of the requested information. You state that the department does not possess some of the requested information.¹ Further, you claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

¹ The Act compels disclosure of public information that is in existence, but it does not require a government entity to prepare or assemble new information in response to a request. *See* Gov't Code § 552.002(a); *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 268 (Tex. Civ. App.—San Antonio 1978, writ dismissed) (ruling that government agency could not be required to make copies of documents no longer in its possession). However, in responding to a request for information, the governmental body must make a good-faith effort to relate the request to the information that it holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because you have raised section 552.108 of the Government Code in relation to information that you do not possess, we will not address your argument under this section.

section encompasses other statutes that make information confidential. The submitted information consists of a Physical Fitness Evaluation Score Sheet and an L-3 Declaration of Psychological and Emotional Health. The L-3 form is required by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") and is confidential pursuant to section 1701.306 of the Occupations Code.² Section 1701.306 provides as follows:

(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. Therefore, the department must withhold the L-3 form under section 552.101 in conjunction with section 1701.306 of the Occupations Code. However, the physical fitness evaluation score sheet was not completed by a licensed physician. Therefore, section 1701.306 is not applicable to the physical fitness evaluation score sheet and it must be released to the requestor.³

² We note that you cite to section 415.057 of the Government Code, which was repealed by the 76th Legislature. See Act of May 13, 1999, 76th Leg., R.S. ch. 388, § 6(b)(1), 1999 Tex. Gen. Laws 1431, 2440. Section 1701.306 of the Occupations Code is the current statute covering this type of information.

³ The physical fitness evaluation score sheet contains confidential information that is not subject to release to the general public. See Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or his authorized representative, the department should again seek our decision.

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 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,

A handwritten signature in cursive script that reads "Jennifer E. Berry".

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 198666

Enc: Submitted documents

c: Mr. Alfonso V. Mancera
c/o Jerry Bruce Cain
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579
(w/o enclosures)