



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2004

Mr. Renaldo L. Stowers
Associate General Counsel
University of North Texas System
P.O. Box 310907
Denton, Texas 76203-0907

OR2004-5333

Dear Mr. Stowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204373.

The University of North Texas Police Department (the "department") received a request for the complete personnel and civil service files of two named officers. You state you have released some of the requested information, but claim that some of the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you inform us that you submitted "the identical polygraph examination and report that is the subject of this request" in a previous request for a decision from this office, but that you submitted this request because "there are additional documents responsive to the request for information that contain polygraph information." In response to the previous request, this office issued Open Records Letter No. 2003-8167 (2003). With regard to

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. In addition, you state that "a representative for the requestor authorized the university to redact directory information and other information subject to mandatory exceptions under the [Public Information] Act (the "Act")." Therefore, this opinion does not address that information.

information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, you may continue to rely on that ruling as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We now address your assertion that the submitted information is excepted from release under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses section 1703.306 of the Occupations Code. Section 1703.306 governs information obtained in the course of conducting a polygraph examination and provides that "a person for whom a polygraph examination is conducted ... may not disclose information acquired from a polygraph examination" except to certain categories of people. The requestor does not fall within any of the enumerated categories; therefore, the information that we have marked is confidential under section 1703.306 and must be withheld from release under section 552.101. The remaining information 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

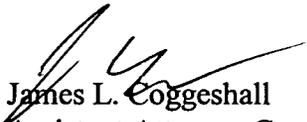
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The 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 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 204373

Enc. Submitted documents

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