



ATTORNEY GENERAL OF TEXAS  
G R E G A B B O T T

March 21, 2005

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2005-01940A

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 222339A.

The Texas Department of Public Safety (the "department") received a request for information pertaining to a named state trooper. You state that the department has released some of the requested information. This office issued Open Records Letter No. 2005-01940 (2005) on March 7, 2005, in response to the department's request for a decision. In your letter to this office of March 9, 2005, you request clarification of the ruling. We have re-examined our ruling and determined that Open Records Letter No. 2005-01940 is in error and should be withdrawn. The present decision shall substitute for the ruling issued as Open Records Letter No. 2005-01940.

You claim that information pertaining to a psychological evaluation is exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 1701.306 of the Occupations Code requires that the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") may not issue a license to a peace officer candidate unless the person is examined by a licensed psychologist or psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as a peace officer. See Occ. Code § 1701.306. Section 1701.306(b) provides that the written declaration "is not public

information.” *Id.* § 1701.306(b). You state that the document at issue was created by a licensed psychologist pursuant to section 1701.306. We therefore conclude the document is confidential by law and must be withheld pursuant to section 552.101 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. *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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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. 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 ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 222339

Enc: Submitted documents

c: Mr. Charles C. Dickerson  
325 West Sabine Street, Suite 4  
Carthage, Texas 75633  
(w/o enclosures)