



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2007

Ms. Julia Gannaway
Lynn, Pham, & Ross, Llp
University Centre II
1320 South University Drive, Suite 720
Fort Worth, Texas 76107

OR2007-10948

Dear Ms. Gannaway:

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# 287419.

The City of Waxahachie (the "city"), which you represent, received a request for any exhibits used in a specified arbitration hearing. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.107 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." Gov't Code § 552.101. Section 552.101 encompasses section 1703.306 of the Occupations Code, which 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] Board 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. The requestor does not fall into any of the categories of individuals authorized to receive the submitted polygraph information. Accordingly, the city must withhold the information we have marked within Exhibit E under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

The city claims that Exhibit D is excepted from disclosure under section 552.107(2) of the Government Code. This section excepts from required public disclosure information if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). The city states that it was a party in two municipal civil service appeal hearings regarding two named Waxahachie Police Department officers.¹ The city informs us that because the hearings related to an ongoing criminal investigation into a murder and arson, a protective order was entered in one of the proceedings by the hearing examiner.² The protective order was signed by the hearing examiner on October 18, 2006 and makes specific statements made during the hearings confidential. The city informs us that the hearing from which the order stems has been finalized, but the protective order has not been lifted. Therefore, based on the city's representations and our review of the protective order and information at issue, we find that the information subject to the protective order is excepted from public disclosure. Accordingly, the city must withhold Exhibit D under section 552.107(2) of the Government Code.

¹We note that municipal civil service appeals, such as the ones at issue here, are governed by chapter 143 of the Local Government Code. *See* Loc. Gov't Code §§ 143.057, 143.127-143.131. This office has determined that such an administrative forum functions as a court. *Cf.* Open Records Decision No. 588 (1990).

² We note that the city has provided a copy of the protective order for our review.

In summary, the city must withhold the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The city must also withhold Exhibit D under section 552.107(2) of the Government Code. 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, 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); *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 Office of the Attorney General 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 "Reg Hargrove". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 287419

Enc. Submitted documents

c: Ms. Joann Livingston
P.O. Box 877
Waxahachie, Texas 75168
(w/o enclosures)