ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2008

Mr. C. Corey Fickes
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2008-08377

Dear Mr. Fickes:

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# 313249.

The Haltom City Police Department (the "department"), which you represent, received a request for the file for a specified department applicant and all police reports pertaining to two specified individuals and a specified address.[1] You state that the department has released some of the requested information to the requestor. You claim that portions of the submitted applicant report and attachments are excepted from disclosure under sections 552.101 and 552.114 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. This exception encompasses information that other statutes make confidential such as section 1703.306 of the Occupations Code, which provides as follows:

[1]The requestor excluded social security numbers, home addresses, and home phone numbers of the named individuals. Therefore, these items are not responsive to this request and our ruling does not address this information.

> (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 B]oard 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.

Occ. Code § 1703.306. The submitted records contain information acquired from a polygraph examination. The requestor does not fall within any of the enumerated categories; therefore, the department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. You assert that the information you have highlighted in the submitted information is confidential under common-law privacy. This office has found that the public has a legitimate interest in the qualifications of employees of governmental bodies. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). In this instance, the information you seek to withhold was gathered in the course of pre-employment

screening of an applicant for employment at the department. Because this information pertains to the qualifications of an applicant for public employment, it is generally of legitimate public interest to the public. Accordingly, most of the information you have highlighted in this instance may not be withheld under section 552.101.

We note, however, that a small portion of the submitted information is personal financial information. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing. *See* Open Records Decision Nos. 545 (1990) (mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Furthermore, we find that there is no legitimate public interest in the release of this information in this instance. Therefore, the department must withhold the financial information we have marked under section 552.101 of the Government Code in conjunction with common law privacy.

Next, you seek to withhold the submitted transcripts under section 552.114 of the Government Code and the provisions of the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a). Section 552.114 excepts from disclosure student records "at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). FERPA governs the availability of student records held by educational institutions or agencies receiving federal funds. These provisions only apply to student records in the custody of educational institutions and to records directly transferred from the educational institution to the third party. 34 C.F.R. § 99.33(a)(2). In this instance, the department maintains the transcripts at issue. The department is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth is not an "educational agency" within FERPA). You do not assert, nor does it appear from our review, that the department received the transcripts directly from the educational institutions at issue. Therefore, section 552.114 and FERPA do not apply to the submitted transcripts. As you raise no other exception to disclosure of the submitted transcripts, with the exception of the non-responsive information, they must be released in their entirety.

In summary, the department must withhold: 1) the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code and 2) the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining responsive 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

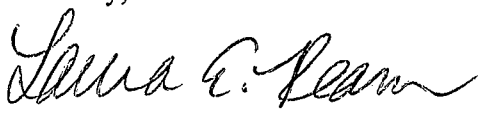
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 313249

Enc. Submitted documents

c: Mr. E. Frankum
P.O. Box 130144
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(w/o enclosures)