



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2011

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County, Texas
P.O. Box 61429
Houston, Texas 77208-1429

OR2011-01008

Dear Ms. Hojem:

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# 406387 (TPIA MTA No. 2011-0025).

The Metropolitan Transit Authority of Harris County, Texas ("METRO") received two requests from the same requestor for all reports, documents, and memos that pertain to the requestor. You state you have released some information to the requestor. You also state you have redacted information pursuant to Open Records Decision No. 684 (2009).¹ You claim that the submitted information is excepted 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 of the Government Code excepts "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. Information acquired from a polygraph examination is confidential under section 1703.306 of the Occupations Code, which provides in part:

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision.

(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[.]

Occ. Code § 1703.306(a). Thus, although information acquired from a polygraph examination is generally confidential under section 1703.306(a), METRO has the discretion to release such information to a polygraph examinee or the examinee's authorized representative pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, disclosure of examination results to polygraph examinees).

In this instance, the submitted information includes polygraph information pertaining to two examinees. We note that the requestor is one of the examinees at issue. We also note that you do not seek to withhold any of the information that pertains to the requestor under section 1703.306(a). We therefore assume that METRO has elected to exercise its discretion to release the polygraph information relating to the requestor in this instance. You contend, however, that the marked information pertaining to the other examinee is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. Upon review, we agree that the information we have marked must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. We find, however, that the rest of the information at issue was not acquired from a polygraph examination. We therefore conclude that the remaining information may not be withheld under section 552.101 in conjunction with section 1703.306(a).

We note portions of the remaining information are subject to section 552.117(a)(2) of the Government Code.² Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, METRO must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

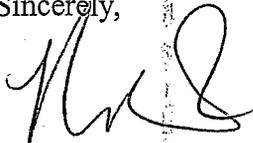
²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, METRO must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. METRO must also withhold the information we have marked under section 552.117(a)(2) of the Government Code. The remaining information must be released.³

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 406387

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³In addition to the generally confidential polygraph information that METRO is releasing to the requestor, the submitted documents contain information that implicates the privacy interests of the requestor. The requestor has a right of access, however, to her own private information. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Should METRO receive a request for these same records from another requestor, METRO should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.