



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 22, 2011

Mr. Peter Scott  
Assistant City Attorney  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2011-02628

Dear Mr. Scott:

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# 409660 (City ID# 423).

The City of Wichita Falls (the "city") received a request for any psychological evaluations performed on a named individual when she was attempting to obtain employment with the city's police department. 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.

We note a portion of the submitted information, which we have marked, is not responsive to the instant request because it is not a psychological evaluation. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

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 information made confidential by other statutes, such as section 1701.306 of the Occupations Code. Section 1701.306 provides as follows:

(a) The [Texas Commission on Law Enforcement Officers Standards and Education ("TCLEOSE")] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought[.]

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). The responsive information includes two L-3 Declaration of Psychological and Emotional Health forms required by TCLEOSE. The city must withhold these L-3 declarations, which we have marked, under section 552.101 in conjunction with section 1701.306 of the Occupations Code.<sup>1</sup>

Section 552.101 also encompasses section 611.002 of the Health and Safety Code. Section 611.002 governs the public availability of mental health records and provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that is made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, .0045; Open Records Decision No. 565 (1990). The remaining responsive information, which we have marked, constitutes mental health records that the city must withhold under section 552.101 in conjunction with section 611.002, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045.

In summary, the city must withhold the L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The city must withhold the confidential mental health records we have marked under section 552.101 of the Government Code in conjunction with section 611.002

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<sup>1</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code, without the necessity of requesting an attorney general decision.

of the Health and Safety Code, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045 of the Health and Safety Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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](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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 409660

Enc. Submitted documents

c: Requestor  
(w/o enclosures)