



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2011

Mr. B. Chase Griffith
For City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-16672

Dear Mr. Griffith:

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# 435944 (McKinney ORR# 10-4281).

The City of McKinney (the "city"), which you represent, received a request for the F-5 report of a named individual. You claim the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive because it does not consist of the requested F-5 report. The city need not release this nonresponsive information, which we have marked, in response to this request, and this ruling will not address that information.

Next, we note the requestor identifies himself as a representative of the Collin County Criminal District Attorney's Office (the "district attorney") and states he is requesting the F-5 report on behalf of the district attorney. Accordingly, the city has the discretion to release the requested information to this requestor pursuant to an intergovernmental transfer. This office ruled in Open Records Decision No. 661 (1999) whether a governmental entity may release information to another governmental entity is not a question under the Act, as the Act is concerned with the required release of information to the public. Gov't Code §§ 552.001, .002, .021; *see* Attorney General Opinions H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision No. 655 (1997). For many years, this office has recognized

it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision Nos. 655 (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has concluded information may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836, H-242, M-713; Open Records Decision Nos. 655, 414 (1984). Thus, the release of information by one agency to another agency is not a release to the public for the purposes of section 552.007 of the Government Code, which prohibits the selective disclosure of information. *See* ORD 655 at 8. Accordingly, the city would have the discretion to release the requested information to this requestor even if the information is confidential. However, should the city decline to exercise that discretion, it must nonetheless adhere to the following decision regarding the applicability of the claimed exception to the requested 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 other statutes make confidential, such as section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement Officers Standards and Education ("TCLEOSE") under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

- (a) All information submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.
- (b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release information submitted under this subchapter.

Act of May 23, 2011, 82nd Leg., R.S., S.B. 545, § 4 (to be codified as an amendment to Occ. Code § 1701.454). The submitted responsive information consists of an F-5 ("Report of Separation of Licensee") report, which does not indicate the officer at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the submitted F-5 report pursuant to

section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 435944

Enc. Submitted documents

c: Requestor
(w/o enclosures)