



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

September 25, 2012

Mr. Ronald D. Stutes  
Potter Minton, P.C.  
500 Plaza Tower, 110 North College Avenue  
Tyler, Texas 75702

OR2012-15289

Dear Mr. Stutes:

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# 466201.

The Palestine Police Department (the "department") received a request for information pertaining to the polygraph tests given to a named individual as a requirement of his parole. You claim the requested information is either not subject to the Act or excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

You indicate the submitted polygraph information is not subject to the Act because the individual who conducted the polygraph examination did not create the report on behalf of the department or the City of Palestine, but instead only provided it to the department after a complaint against him was made. However, section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002. The department maintains the submitted information in connection with the transaction of its official business. Thus, the submitted information consists of public information under the Act and we will address your arguments against its disclosure under the Act.

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 section encompasses information protected by other statutes, including section 1703.306 of the Occupations Code, which provides the following:

(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 [Texas Department of Licensing and Regulation] 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 information contains polygraph information that is confidential under section 1703.306, and the requestor does not appear to have a right of access to the information under that section. Accordingly, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. However, you have not established any of the remaining information was acquired from a polygraph examination. Therefore, the remaining information is not confidential under section 1703.306, and the department may not withhold it from release on that ground.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual

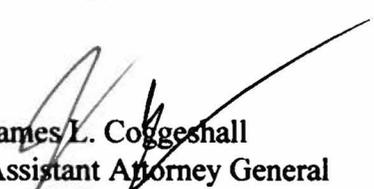
assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found the identities of victims of sexual abuse are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Some of the submitted information is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

To conclude, the department 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 and common-law privacy. The department must release the remaining information.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 466201

Enc. Submitted documents

c: Requestor  
(w/o enclosures)