



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2012

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2012-20699

Dear Mr. Weir:

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# 474969 (COSA File No. W010673).

The City of San Antonio (the "city") received a request for the polygraph questions and chart results from the polygraph examination of the requestor's client. You claim 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 have also received and considered comments from the requestor.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note portions of the submitted information are not responsive to the request because they do not consist of the requested questions or charts. This ruling does not address the public availability of the information that is not responsive to the request, and the city is not required to release this information in response to this request.

¹The requestor contends the city failed to comply with section 552.301. Regardless of whether the city failed to comply with section 552.301 of the Government Code in requesting a ruling, we note section 552.101 of the Government Code is a mandatory exception that constitutes a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the city's argument under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information other statutes make confidential, such as section 1703.306 of the Occupations Code, which provides in part:

(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)(1). We agree the responsive information consists of information acquired from a polygraph examination. However, in this instance, the requestor is the examinee’s authorized representative. Thus, the city has the discretion to release the responsive information to this requestor pursuant to section 1703.306(a)(1) of the Occupations Code. *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees). Otherwise, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 1703.306(a) 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 474969

Enc. Submitted documents

c: Requestor
(w/o enclosures)