



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2013

Mr. Jeffrey L. Moore
Counsel for the City of the Colony
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-06138

Dear Mr. Moore:

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# 484086.

The Colony Police Department (the "department"), which you represent, received a request for a specified internal affairs investigation. You state the department is releasing some of the requested information to the requestor. 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.

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, such as section 1701.454 of the Occupations Code. Section 1701.545 governs the public availability of information submitted to the Texas Commission on Law Enforcement Officer 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 the [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, 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.

Occ. Code § 1701.454. The submitted information includes an F-5 form and F-5 report, which were submitted to TCLEOSE pursuant to subchapter J of chapter 1701 of the Occupations Code. This information pertains to the requestor, who resigned from the department. Furthermore, the submitted information does not reflect the requestor resigned due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the department must withhold the information you have marked under section 552.101 in conjunction with section 1701.454.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code. Section 1703.306 provides the following, in pertinent 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[.]

Id. § 1703.306(a)(1). We agree some of the remaining information constitutes information acquired from a polygraph examination. However, in this instance, the requestor is the polygraph examinee. Thus, the department has the discretion to release the requestor's polygraph information, which we have marked, pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permitted, but did not require, examination results to be disclosed to examinees). Otherwise, the department must withhold the polygraph information we have marked under section 552.101 in conjunction with section 1703.306(a) of the Occupations Code. We find, however, you have failed to demonstrate any of the remaining information you seek to withhold on this basis was acquired from a polygraph examination. As such, none of the remaining information at issue may be withheld under section 552.101 in conjunction with section 1703.306(a).

We note a portion of the remaining information is subject to section 552.102 of the Government Code.¹ Section 552.102(a) excepts from disclosure "information in a personnel

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions.

file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) exempts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we conclude the department must withhold the information we have marked under section 552.102(a).

You indicate the department has redacted a driver’s license number of an individual other than the requestor from the submitted information under section 552.130(c) of the Government Code.² Section 552.130(a)(1) provides information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1). We conclude the department must withhold the additional information we have marked under section 552.130(a)(1).

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The department has the discretion to release the requestor’s polygraph information we have marked pursuant to section 1703.306(a)(1) of the Occupations Code. The department must withhold the information we have marked under section 552.102(a) of the Government Code and the additional information we have marked under section 552.130 of the Government Code. The department must release the remaining information.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

²Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). Gov’t Code § 552.130(c); *see also id.* § 552.130(d)-(e).

³We note the requestor has a right of access to some of the information being released. *See generally* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Occ. Code § 1703.306(a)(1). Thus, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 484086

Enc. Submitted documents

c: Requestor
(w/o enclosures)