



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2014

Ms. Rachel L. Lindsay
Brown & Hofmeister
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-02691

Dear Ms. Lindsay:

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# 514861 (ORR# 10-9029 and 10-9077).

The McKinney Police Department (the "department"), which you represent, received two requests from the same requestor for two specified incident reports, one of which includes a request for polygraph results. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses 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. We have marked information acquired from a polygraph examination in the submitted information. Section 1703.306(a) makes this polygraph information confidential. *See id.* § 1703.306(a). However, the department has the discretion to release the polygraph information of the requestor to the requestor pursuant to section 1703.306(a)(1). *See Open Records Decision No. 481 at 9 (1987)* (predecessor to section 1703.306 permits, but does not require, examination results to be disclosed to examinees). Otherwise, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code.¹

Next, you claim the remaining information in incident report numbers 13-009290 and 13-009820 is excepted from disclosure under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code § 552.108(a)(2)*. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state incident report numbers 13-009290 and 13-009820 pertain to investigations that have concluded and that did not result in conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) is applicable to incident report numbers 13-009290 and 13-009820.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes, among other items, a detailed description of the offense. See *id.* at 3-4. Thus, with the exception of basic information, the department may withhold incident report numbers 13-009290 and 13-009820 under section 552.108(a)(2) of the Government Code.

We note you seek to withhold the entirety of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the information we have marked in incident report number 13-009290 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, in releasing basic information, the department must withhold the information we have marked in incident report number 13-009290 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department has the discretion to release the polygraph results we have marked pursuant to section 1703.306(a)(1) of the Occupations Code; otherwise, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code. With the exception of basic information, the department may withhold the remaining information in incident report numbers 13-009290 and 13-009820 under section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the information we have marked in incident report number 13-009290 under section 552.101 of the Government Code in conjunction with common-law privacy.

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.texasattorneygeneral.gov/open/>

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Tamara H. Holland". The signature is written in a cursive, flowing style.

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/som

Ref: ID# 514861

Enc. Submitted documents

c: Requestor
(w/o enclosures)