



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2014

Ms. Michele Freeland
Legal Assistant
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2014-13890

Dear Ms. Freeland:

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# 532413 (DPS PIR# 14-2136).

The Texas Department of Public Safety (the "department") received a request for ten categories of information related to a specified individual and his employment with the department. 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.

Initially, we note you submitted only a polygraph examination result in response to the instant request and did not submit information responsive to the remainder of the request. Further, you have not indicated that information responsive to the remainder of the request does not exist or that you wish to withhold such information from disclosure. Therefore, to the extent information responsive remainder of the request exists, we assume the department has released it to the requestor. If the department has not released any such information, it must do so at this time.¹ Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664

¹We note, however, Open Records Letter No. 2010-12863 (2010) is a previous determination authorizing the department to withhold personnel records of commissioned officers of the department under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code, unless the exceptions to confidentiality listed in subsections 411.00755(b)(1)-(12) or the release provisions listed in subsection 411.00755(c) are applicable. See Gov't Code § 411.00755(b)(1)-(12), (c).

(2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute. 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.

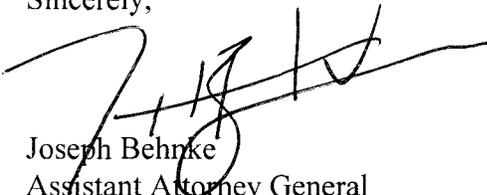
(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Id. § 1703.306. Upon review, we find the submitted information consists of information acquired from a polygraph examination subject to section 1703.306. The requestor does not appear to fall into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 1703.306 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.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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 532413

Enc. Submitted documents

c: Requestor
(w/o enclosures)