



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2017

Mr. Bill Delmore
Assistant District Attorney
Montgomery County District Attorney's Office
207 West Phillips, 2nd Floor
Conroe, Texas 77301

OR2017-26597

Dear Mr. Delmore:

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# 686499.

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for any videotaped statements made by a named individual to investigators and any unrecorded statements made by a named individual to specified individuals.¹ You state you have released some information. You claim some of 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

¹We note the district attorney's office sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Code § 552.101. Section 552.101 encompasses information that other statutes make confidential. Section 1703.306 of the Occupations Code 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[.]
- (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.

Occ. Code § 1703.306(a). You assert a portion of the submitted information is information acquired from a polygraph examination. The requestor does not fall within any of the categories of individuals who have a right of access to the submitted polygraph information under section 1703.306(a). Accordingly, the district attorney's office must withhold the submitted polygraph information we marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. However, we find none of the remaining information at issue constitutes information acquired from a polygraph examination. Accordingly, the district attorney's office may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. Thus, the district attorney's office 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.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 "Emily Buchanan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Emily Buchanan
Attorney
Open Records Division

EB/som

Ref: ID# 686499

Enc. Submitted documents

c: Requestor
(w/o enclosures)