



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 13, 2019

Mr. James T. Jeffrey, Jr.  
Counsel for the Town of Pantego  
Law Offices of Jim Jeffrey  
3200 West Arkansas Lane  
Arlington, Texas 76016

OR2019-12764

Dear Mr. Jeffrey:

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# 765175.

The Town of Pantego (the "town"), which you represent, received a request for all records regarding specified investigations of two named individuals and the personnel files of three named individuals, one of which the requestor represents.<sup>1</sup> You state you will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the submitted information, which you indicated, is not responsive to the present request. This ruling does not address the public availability of the non-responsive information, and the town need not release it in response to this request.

Next, you state the town sought clarification for Abbott portion of the request for information.

---

<sup>1</sup>We note you sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a).

*See* Gov't Code § 552.222(b); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

You further state the town has not yet received a response to the request for clarification. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this instance, you have submitted information you believe is responsive to the request and made arguments against disclosure of this information. Thus, we assume you have made a good-faith effort to relate the request to information the town holds, and we will address the applicability of the submitted arguments to the information. However, the town has no obligation at this time to release any additional responsive information for which it has not received clarification. If the requestor responds to the request for clarification, the town must seek a ruling from this office before withholding any additional responsive information from the requestor. *See* Gov't Code § 552.222(b); *City of Dallas*, 304 S.W.3d at 387.

Next, you state, and we agree, the submitted responsive information was the subject of previous requests for information, as a result of which this office issued Open Records Letter No. 2018-23231 (2018). In that ruling we determined the town (1) must withhold the F-5 form under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code; (2) must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*; (3) may withhold certain information under Texas Rule of Evidence 503; (4) must withhold certain information under section 552.117(a)(1) of the Government Code to the extent the individual timely requested confidentiality under section 552.024 of the Government Code; and (5) must release the remaining responsive information. In the instant request, however, we note the requestor represents the individual whose F-5 form was withheld under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code. Accordingly, this requestor has access to the F-5 form under former section 1701.452(b) of the Occupations Code. Thus, we find circumstances have changed in regard to the F-5 form and the town may not rely on Open Records Letter No. 2018-23231 as a previous determination with respect to the F-5 form and the requestor in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your argument against disclosure of the F-5 form. With respect to the remaining responsive information, there is no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, with regard to the remaining responsive information, the town must

continue to rely on Open Records Letter No. 2018-23231 as a previous determination and withhold or release that information in accordance with that ruling. *See id.*

The submitted F-5 form relates to the resignation of the requestor's client before September 1, 2005. Employment termination reports regarding resignations or terminations that occurred before September 1, 2005, are governed by former section 1701.452, which was continued in effect for that purpose.<sup>2</sup> Former section 1701.452 provided:

(a) The head of a law enforcement agency shall submit a report to [the Texas Commission on Law Enforcement ("TCOLE")] on a form prescribed by [TCOLE] regarding a person licensed under this chapter who resigns from the employment of the law enforcement agency or whose appointment with the law enforcement agency is terminated. The agency head shall include in the report an explanation of the circumstances under which the person resigned or was terminated.

(b) The head of the law enforcement agency from which a person resigns or is terminated shall provide to the person a copy of the report. The person may submit a written statement to [TCOLE] to contest or explain any matter contained in the report.

Act of May 17, 1999, 76th Leg., R.S., ch. 388, § 1, 1999 Tex. Gen. Laws 1431, 2226 amended by Act of May 30, 2005, 79th Leg., R.S., ch. 1298, § 2, 2005 Tex. Gen. Laws 4092, 4092. The F-5 form pertains to the resignation of the requestor's client from the town's police department on November 8, 1998. Accordingly, we find that the requestor has a right of access to the F-5 form pursuant to former section 1701.452(b) of the Occupations Code and it must be released to her on that basis.

In summary, the town must release the submitted F-5 form pertaining to the requestor's client pursuant to former section 1701.452(b) of the Occupations Code. The town must continue to rely on Open Records Letter No. 2018-23231 as a previous determination and withhold or release the remaining responsive information in accordance with that ruling.

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.

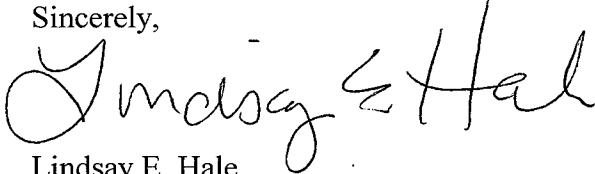
This ruling triggers important deadlines regarding the rights and responsibilities of the

---

<sup>2</sup>Act of May 30, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4092, 4092.

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](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 cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/jxd

Ref: ID# 765175

Enc. Submitted documents

c: Requestor  
(w/o enclosures)