



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 31, 2019

Ms. Stacie S. White
Counsel for the Town of Flower Mound
Taylor, Olson, Adkins, Sralla, & Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2019-30861

Dear Ms. White:

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# 794509 (PIR 430-19).

The Town of Flower Mound (the "town"), which you represent, received a request for the requestor's application for a position with the town's fire department. You state the town will withhold information pursuant to Open Records Decision 684 (2009) and pursuant to section 552.130(c) of the Government Code.¹ 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 "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 pertains to the results of polygraph examinations. Section 1703.306 provides, in relevant part, the following:

¹ Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

(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[.]

Occ. Code § 1703.306(a)(1). Upon review, we find some of the submitted information, which we marked, constitutes information acquired from a polygraph examination. However, in this instance, the requestor is the polygraph examinee. Thus, the town has the discretion to release the polygraph information at issue pursuant to section 1703.306(a)(1) of the Occupations Code. *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 town must withhold the polygraph information we marked under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which pertains to L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by TCOLE. Section 1701.306 provides the following:

(a) [TCOLE] may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCOLE]. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). Upon we find none of the remaining information consists of L-2 or L-3 forms. Accordingly, section 1701.306 of the Occupations Code does not apply to the remaining information, and the town may not withhold it under section 552.101 of the Government Code on that basis.

In summary, the town has the discretion to release the polygraph information at issue to this requestor pursuant to section 1703.306(a)(1) of the Occupations Code, but otherwise, the town must withhold the polygraph information we marked under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code. The town must release the remaining information.²

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/gw

Ref: ID# 794509

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note the requestor has a right of access to some of the information being released. *See* Occ. Code § 1703.306; Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the TOWN must again seek a decision from this office if it receives another request for the same information from another requestor.