



January 2, 2002

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2002-0009

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156701.

The Department of Public Safety (the "department") received a request for information regarding the concealed handgun license of Michael S. Edwards on October 3, 2001. On October 23, 2001 you informed our office that the department was releasing copies of all file documents received from Mr. Edwards as well as copies of all correspondence from the department to Mr. Edwards regarding the status of his license. You claim, however, that the remaining responsive information is excepted from disclosure under sections 411.192 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first consider your contention that the department's request for a decision was timely. A governmental body wishing to withhold requested information must request an attorney general's decision no later than the 10th business day after the date of receiving the written request. Gov't Code § 552.301(b). If the governmental body does not timely comply with the requirements of Government Code section 552.301, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302.

In this case, you failed to request a decision from this office within ten days of receiving the request. However, you contend that you asked the requestor for clarification of his request and it was the requestor's failure to respond to your request for clarification which caused your untimely submission of your request for an open records ruling. You provided our office with a "Concealed Handgun Licensing Unit Contact Sheet," which indicates that on October 13th, you left the requestor a voice mail, which informed him that you would need to request a ruling from this office. The contact sheet does not indicate, nor do you say as much in your brief to this office, that you were uncertain about what information was

requested or that you wished to discuss with the requestor how he might narrow the scope of his request. The time used in clarifying or narrowing the scope of a request does not count as part of the statutory allotment of ten business days to request a decision under section 552.301. Open Records Decision No. 663 (1999). However, we find that, here, the department's contact with the requestor was not a communication to clarify or narrow the request. Thus, the ten-day deadline was not tolled, and the department failed to comply with section 552.301 in requesting this decision. *See* Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances in which section 552.301 ten-business day deadline is tolled).

A compelling reason to withhold the information from the public is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Sections 411.192 and 411.193 of the Government Code govern the release of all information maintained by the department concerning the licensure of individuals to carry a concealed handgun. Section 411.192 provides:

The department shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. The department shall, on written request and payment of a reasonable fee to cover costs of copying, disclose to any other individual whether a named individual or any individual whose full name is listed on a specified written list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. *Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552, Government Code, except that the applicant or license holder may be furnished a copy of disclosable records on request and the payment of a reasonable fee. The department shall notify a license holder of any request that is made for information relating to the license holder under this section and provide the name of the person or agency making the request. This section does not prohibit the department from making public and distributing to the public at no cost lists of individuals who are certified as qualified handgun instructors by the department.*

Gov't Code § 411.192 (emphasis added). Section 411.193 further states:

The department shall make available, on request and payment of a reasonable fee to cover costs of copying, a statistical report that includes the number of licenses issued, denied, revoked, or suspended by the department during the preceding month, listed by age, gender, race, and zip code of the applicant or license holder.

Gov't Code § 411.193.

We find that the submitted information is confidential under section 411.192 of the Government Code. Therefore, based on section 552.101 of the Government Code, the department must withhold the submitted information from disclosure.¹

We also note that the submitted information contains a medical record that is subject to the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002(b) of the Occupations Code protects from disclosure "[a] record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician." Medical records may only be released as provided by chapter 159 of the Occupations Code. Open Records Decision No. 598 (1991). We have marked the submitted documents to show which record is subject to the MPA.

In summary, we find that the submitted information is confidential under section 411.192 of the Government Code and must be withheld from disclosure based on section 552.101 of the Government Code. The submitted information also contains a medical record, which we have marked. This record may only be released as provided by chapter 159 of the Occupations Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

¹Because we find the submitted information is confidential under section 411.192 of the Government Code, we need not address your claim under section 552.108.

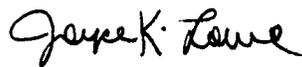
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 156701

Enc: Submitted documents

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