



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 16, 2003

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

OR2003-3312

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# 181161.

The Texas Department of Public Safety (the "department") received a request for information relating to the registration of a specified shooting range as a facility for handgun proficiency instruction, and information relating to the certification of the owner of the range as a concealed handgun instructor. In particular, the requestor asks for the following information:

1. The application for [the department's] certification of a gun range to teach concealed handgun classes for: [the named individual].
2. A copy of certification for: [the named individual].
3. A copy of the [department's] report and the officer or persons [sic] name that did the inspection of [a specified shooting range].
4. A copy of [the named individual's] permit to teach concealed handgun classes.
5. A copy of [the named individual's] permit to operate a public gun range, if one exists.
6. A copy of application for a public gun range, if one exists.

You claim that the requested 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.

We begin by noting that the department has not submitted information responsive to items 1, 3, 4 and 5 of the request. We assume that, to the extent this information exists, it has been released to the requestor. If not, the department must release such information immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the 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." This section encompasses information protected by other statutes. You contend that the requested information is confidential under section 411.192 of the Government Code. Section 411.192 provides as follows:

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, 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. Section 411.190 of the Government Code provides the training and education requirements by which an individual can be certified as a qualified handgun instructor by the department. *See* Gov't Code § 411.190; *see also* 37 T.A.C. §§ 6.71-.82. The department has adopted rules pertaining to the public release of information concerning certified handgun instructors, individuals licensed to carry a concealed handgun, and registered shooting ranges. *See* 37 T.A.C. §§ 6.86, 6.111-.114. Section 6.111 of title 37 of the Texas Administrative

Code provides that the department shall make a list of certified instructors available to the public. Under section 6.111, a certified instructor may request to be removed from the public list. However, section 6.111 expressly provides that information concerning a certified instructor remains subject to disclosure pursuant to a request made under the Public Information Act. *See* 37 T.A.C. § 6.111.

Section 411.192 expressly states, “[t]he 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.” Gov’t Code § 411.192. Section 411.192 further provides that the information concerning an individual that is subject to disclosure “includes the individual’s name, date of birth, gender, race, and zip code.” Gov’t Code § 411.192. Pursuant to section 411.192, the department must disclose to the requestor whether the named individual is a certified handgun instructor. However, we have marked the information in the submitted documents concerning the named individual that is confidential under section 411.192. The department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 411.192.

We next address the portion of the request pertaining to the specified shooting range. You contend that information relating to whether the shooting range at issue is, has ever been, or has ever sought to be registered with the department is confidential under section 411.192. You cite to the department’s own regulation, which states, “[e]ach registered range will be assigned an identification number to facilitate monitoring by the department of instruction of license applicants. Information provided to the department shall be available to the public in the same manner as information concerning certified instructors.” 37 T.A.C. § 6.86(g). We note that section 411.192 provides for the confidentiality of information maintained pursuant to subchapter H of chapter 411. Subchapter H specifically contemplates that the department maintain information regarding individual applicants for a license to carry a concealed handgun and information regarding certified handgun instructors. *See* Gov’t Code §§ 411.174, 190. However, the department has not established that it maintains its records regarding shooting ranges pursuant to any specific provision of subchapter H. Therefore, we find you have not established that the submitted information regarding the shooting range at issue is within the scope of section 411.192 of the Government Code. We therefore conclude that the department may not withhold the submitted information regarding the shooting range pursuant to section 552.101 of the Government Code in conjunction with section 411.192.

In summary, we have marked information pertaining to the named individual at issue that is confidential under section 411.192 of the Government Code and must be withheld under section 552.101 of the Government Code. The remainder of the submitted information must be released to the requestor.

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 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 Dep't of Pub. 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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,

A handwritten signature in black ink, appearing to read "David R. Saldivar", with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 181161

Enc: Submitted documents

c: Ms. Lynn Gray
1000 CR 215
Florence, Texas 76527
(w/o enclosures)