ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2005

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

OR2005-07098

Dear Ms. Smith:

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# 229718.

The Texas Department of Public Safety (the "department") received a request for the address and telephone number of a named handgun instructor licensed by the department. 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.

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.

Gov't Code § 411.192. The department has adopted rules pertaining to the public release of information concerning certified handgun instructors. *See* 37 T.A.C. § 6.111. 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 this section, 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 Act. *See id.*

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." *Id.*; *see also* 37 TAC § 6.113. Thus, section 411.192 delineates the only categories of information concerning individuals that are subject to disclosure. In this instance, the requestor seeks the home address and telephone number of the named licensee. We find that the requested information is not subject to disclosure under section 411.192 and must therefore be withheld pursuant to section 552.101. *See also* 37 TAC §§ 6.113, .114.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 229718

Enc. Submitted documents

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(w/o enclosures)