



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2007

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

OR2007-13517

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# 293281.

The Texas Department of Public Safety (the "department") received a request for all information pertaining to the charges that have been brought against a named officer and a list of all citations written by a named officer. The requestor also seeks a copy of any and all complaints and disciplinary actions filed against three named officers. You state that a portion of the requested information has been released to the requestor. You also indicate that you do not have a portion of the requested information.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information other statutes make confidential. Section 411.00755 of the Government Code states in pertinent part:

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received, create information responsive information, or obtain information that is not held by or on behalf of the department. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

(b) Notwithstanding Chapter 552, the personnel records of a commissioned officer of the department may not be disclosed or otherwise made available to the public, except the department shall release:

(1) any letter, memorandum, or document relating to:

...

(B) misconduct by the officer, if the letter, memorandum, or document resulted in disciplinary action[.]

Act of April 25, 2007, 80th Leg., R.S., ch. 35, § 1, 2007 Tex. Sess. Law. Serv. 33–34. Section 411.00755 defines a personnel record as “any letter memorandum, or document maintained by the department that relates to a commissioned officer of the department. . . .” *Id.* For the purpose of section 411.00755, “disciplinary action” means discharge, suspension, or demotion. Gov’t Code § 411.0072(a)(1).

You state that the submitted information “consist[s] of an internal investigation of a complaint related to a criminal charge filed against [a named officer].” You further state that the internal affairs investigation is currently pending and that no disciplinary action has been imposed. Based on your representations and our review of the submitted information, we conclude that the submitted information pertains to an internal investigation that has not resulted in disciplinary action. Therefore, the department must withhold the submitted information under section 552.101 in conjunction with section 411.00755 of the Government Code.<sup>2</sup>

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).

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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); *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 Office of the Attorney General 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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jb

Ref: ID# 293281

Enc. Submitted documents

c: Mr. Jerry Jordan  
*The Examiner*  
795 Willow Street  
Beaumont, Texas 77701  
(w/o enclosures)