



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 29, 2008

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

OR2008-13288

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# 323087.

The Texas Department of Public Safety (the "department") received two requests for information related to an investigation of Astro Village Gun Range and a named individual. You claim that the requested 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 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending investigation by the department. We note, however, that section 552.108 generally is not applicable to an investigation that did not result in a criminal investigation or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App. 2002, no pet.); Open Records Decision No. 562 at 10 (1990); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex.Civ.App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982). The information at issue

pertains to an administrative investigation conducted by the department regarding the continued registration of a shooting range. While you assert that "it is possible that the investigation materials will give rise to the filing of criminal charges against one or more individuals[,] you have not demonstrated, and the information at issue does not indicate, that the investigation resulted, or is likely to result, in a criminal investigation or prosecution. Accordingly, the department may not withhold the submitted information under section 552.108.

You next contend that the requested information is confidential under section 411.192 of the Government Code.<sup>1</sup> Section 411.192 governs the release of all information maintained by the department concerning the licensure of individuals to carry a concealed handgun, and provides as follows:

(a) 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. 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.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

...

(d) 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(a), (b), (d). You contend that information relating to a registered shooting range is confidential under section 411.192. You cite to the department's own regulation, which states, "[a] shooting range which is to be used for instruction or proficiency demonstration of license applicants must be registered by the owner with the department as provided by this chapter." 37 T.A.C. § 6.83(b). 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

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<sup>1</sup>Section 552.101 of the Government Code 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 protected by other statutes.

information regarding certified handgun instructors. *See* Gov't Code §§ 411.174, 190. We further note that portions of the submitted information pertain to concealed handgun licensees. You state that the requestors are not representing a criminal justice agency, nor are the requestors seeking their own records. Section 411.193 is not applicable because the requested information does not contain a statistical report. *Id.* § 411.193 (making statistical report including number of licenses issued, denied, revoked, or suspended by department during preceding month available to public). Based on your representations and our review, we find that the records we have marked are confidential under section 411.192 of the Government Code and must be withheld under section 552.101 of the Government Code. 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.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We find that a portion of the submitted information is intimate and embarrassing and of no legitimate public interest. We have marked the information that the department must withhold under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, we have marked information pertaining to concealed handgun licensees that is confidential under section 411.192 of the Government Code and must be withheld under section 552.101 of the Government Code. We have also marked the information that the department must withhold under section 552.101 of the Government Code in conjunction with common-law privacy. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 323087

Enc. Submitted documents

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