



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2009

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

OR2009-06141

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# 342593 (OR 09-0398).

The Texas Department of Public Safety (the "department") received a request for the complete personnel file of a named Texas Ranger. You state you are releasing some of the requested information. You claim that the remaining 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.

Initially, we note the requestor excludes from his request "social security [numbers], NCIC/TCIC reports, vehicle information, home address/phone [numbers], or family member [information], polygraph test results, or medical information." Thus, any of this information within the submitted documents is not responsive to the instant request. Our ruling does not address this non-responsive information, and the department need not release it in response to the request.

Next, you acknowledge, and we agree, that the department failed to request a ruling or submit the responsive information within the statutory time period prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of

openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). In this instance, section 552.101 of the Government Code can provide a compelling reason to overcome this presumption. Therefore, we will consider whether your claimed exception to disclosure requires the department to withhold any portion of 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." Gov't Code § 552.101. This section encompasses information other statutes make confidential. Section 411.00755 of the Government Code states in pertinent part:

(b) Notwithstanding Chapter 552 [of the Government Code], 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:
 - (A) a commendation, congratulation, or honor bestowed on the officer for an action, duty, or activity that relates to the officer's official duties; and
 - (B) misconduct by the officer, if the letter, memorandum, or document resulted in disciplinary action;
- (2) the state application for employment submitted by the officer, but not including any attachments to the application;
- (3) any reference letter submitted by the officer;
- (4) any letter of recommendation for the officer;
- (5) any employment contract with the officer;
- (6) any periodic evaluation of the officer by a supervisor;
- (7) any document recording a promotion or demotion of the officer;
- (8) any request for leave by the officer;

(9) any request by the officer for transfers of shift or duty assignments;

(10) any documents presented to the commission in connection with a public hearing under Section 411.007(f);

(11) the officer's:

(A) name;

(B) age;

(C) dates of employment;

(D) positions held; and

(E) gross salary; and

(12) information about the location of the officer's department duty assignments.

Id. § 411.00755(b). 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.* § 411.00755(a). For the purpose of section 411.00755, "disciplinary action" means discharge, suspension, or demotion. *Id.* § 411.0072(a)(1).

You inform us that the officer at issue is commissioned as a peace officer pursuant to section 411.006(a)(5) of the Government Code. You indicate that the information labeled as Attachment C and portions of Attachment D consists of the officer's personnel file and pertains to an allegation that did not result in discipline. We note Attachment C contains commendations and evaluations. Therefore, this information is subject to section 411.00755(b)(1)(A), (b)(6), and may not be withheld under section 411.00755. However, based on your representations and our review of the submitted information, we agree that except for the commendations and evaluations contained in Attachment C and the information you have marked for release in Attachment D, the department must withhold Attachments C and D under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See*

Gov't Code § 552.130(a)(1).¹ The department must withhold the Texas driver's license information that we have marked in Attachment B under section 552.130.

In summary, except for the commendations and evaluations contained in Attachment C and the information you have marked for release in Attachment D, the department must withhold Attachments C and D under section 552.101 of the Government Code in conjunction with section 411.00755. The department must withhold the Texas driver's license information that we have marked in Attachment B under section 552.130 of the Government Code. The remaining responsive information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 342593

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).