



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2010

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2010-07590

Dear Ms. Cohen:

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# 379393 (DPS ORA # 10-0448).

The Texas Department of Public Safety (the "department") received a request for information pertaining to administrative inquiry number 08-025. You claim that the submitted 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, you acknowledge, and we agree, the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting a decision from our office. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural 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; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You raise section 552.101 of the Government Code for the submitted information. Additionally, we note portions of the submitted information may be subject to section 552.130 of the Government Code. As sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to 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:

(b) 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 in accordance with Chapter 552:

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

...

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

...

(c) The department may release any personnel record of a commissioned officer:

...

(3) with the written authorization of the officer who is the subject of the record.

Id. § 411.00755(b), (c)(3). Section 411.00755 defines a personnel record, in part, as “any letter, memorandum, or document maintained by the department that relates to a commissioned officer of the department[.]” *Id.* § 411.00755(a)(1). For the purpose of section 411.00755, “disciplinary action” means discharge, suspension, or demotion. *Id.* §§ 411.00755(a)(2), 411.0072(a)(1).

You state the submitted information is part of an internal affairs investigation that did not result in the discharge, suspension, or demotion of any department officer. You further state all internal affairs investigation materials are made part of a department officer’s personnel record. We note the information at issue pertains to three department officers, one of whom is the requestor. Although you acknowledge that an employee generally has a right of access to information in his own personnel file, you state the requestor has not provided the department with written authorization from the other two officers who were involved in the investigation at issue. Thus, we understand you to claim the department does not have the authorization to release the submitted information to the requestor pursuant to section 411.00755(c)(3). *See id.* § 411.00755(c)(3). However, we note release of any personnel record of a commissioned officer under section 411.00755(c)(3) requires the “written authorization of the officer who is the subject of the record.” *Id.* § 411.00755(c)(3).

In this instance, you acknowledge that the record at issue consists of an investigation maintained in the requestor's personnel file and that the requestor is the subject of the investigation. Thus, although the investigation involves multiple officers, we conclude that section 411.00755(c)(3) does not require the written authorization of every officer involved. Therefore, based on your representations and our review of the submitted information, we conclude that section 411.00755(c)(3) is applicable in this instance. Accordingly, the department must generally release the submitted information to this requestor pursuant to section 411.00755(c)(3).

However, we note portions of the submitted information are subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We have marked Texas motor vehicle record information that is generally confidential under section 552.130 of the Government Code.

Since the submitted information includes confidential information pursuant to section 552.130 of the Government Code, the question becomes whether the requestor in this case, as a department officer who is the subject of the subject of the records at issue, may nevertheless obtain those records. Because section 411.00755(c)(3) of the Government Code authorizes the requestor to obtain the information in its entirety while section 552.130 of the Government Code excepts from disclosure portions of the information, section 411.00755(c)(3) conflicts with section 552.130. Where statutes are in irreconcilable conflict, the specific provision prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See id.* § 311.026(b), *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.).

In this instance, section 552.130 of the Government Code specifically protects Texas motor vehicle record information and contains its own access provisions. Therefore, we find section 552.130 is not a general exception under the Act. Furthermore, because section 552.130 specifically protects Texas motor vehicle record information while section 411.00755(c)(3) provides a department officer with a general right of access to all personnel files in which that officer is the subject of the record, we find the confidentiality provision found in section 552.130 is more specific than the general right of access provided to the requestor by section 411.00755(c)(3). Accordingly, notwithstanding section 411.00755(c)(3), we conclude the department must withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code.¹

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including certain Texas motor vehicle information under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to this requestor pursuant to section 411.00755(c)(3) of the Government Code.²

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, toll free, at (888) 672-6787.

Sincerely,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 379393

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note this requestor has a special right of access to the information being released. *See* Gov't Code § 552.023 (person has special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect person's privacy interests). Accordingly, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.