



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2010

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

OR2010-08435

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# 382158 (ORA # 10-0660).

The Texas Department of Public Safety (the "department") received a request for certain captain's promotional written examination scores, certain captain's oral interview board scores for each candidate, and all records and correspondence pertaining to the promotion submitted to the Director of the department by any member of the department. 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, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). You state the department received more than one request from this requestor and that the submitted information is responsive to the request received by the department on March 23, 2010. However, based on our review of the submitted requests, we find the submitted information is responsive to the request for information received by the department on January 27, 2010. Accordingly, you were required to request a decision from this office by February 10, 2010. However, the

department's request for a ruling was delivered to our office on April 5, 2010. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we determine the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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); Open Records Decision No. 586 (1991). This office has held a compelling reason exists to withhold information when third party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Because section 552.101 can provide a compelling reason to withhold information, we will consider the applicability of this exception 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:

(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[.]

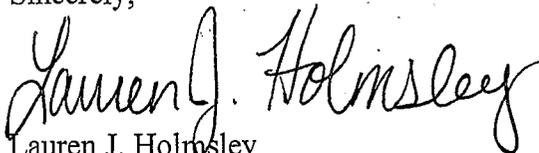
Id. § 411.00755(b). Section 411.00755 defines a personnel record, in part, as "any letter memorandum, or document maintained by the department that relates to a commissioned officer of the department[.]" *Id.* § 411.00755(a). For the purpose of section 411.00755, "disciplinary action" means discharge,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

You state the submitted document is a letter from a department captain to the Director pertaining to a department lieutenant and, thus constitutes a "personnel record" as defined by section 411.00755. You also state that the letter is not a commendation, congratulation, or honor and, thus, section 411.0755(b)(1)(A) does not apply. Further, you state the letter did not result in the discharge, suspension, or demotion of any department officer and, thus, is not subject to section 411.0755(b)(1)(B). Based on your representations, we conclude the department must withhold the submitted letter under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code.

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,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 382158

Enc. Submitted documents

c: Requestor
(w/o enclosures)