



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2010

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

OR2010-09663

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# 382856 (ORA # 10-0699).

The Texas Department of Public Safety (the "department") received a request for the following information: the personnel file of a named officer; any complaints or disciplinary action involving the officer for the past ten years; video and audio recordings created by or involving the officer from a specified time period; copies of citations or warnings issued by the officer during the specified time period; and a thirty-day log of any radar calibrations or malfunctions involving the officer's radar system. You state you have released the requested citations and warnings, some of the requested video and audio recordings, and a copy of the officer's "Radar Shift Log." You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department failed to submit some of the responsive information within the statutory time period prescribed by section 552.301(e) of the Government Code. *See* Gov't Code § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information

¹Although you raise section 552.1175 for portions of the submitted information, we note the correct exception to raise for information pertaining to an officer employed by the department is section 552.117.

presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You raise sections 552.101 and 552.117 for some of the information that was not timely submitted. Additionally, we note some of the information that was not timely submitted is subject to sections 552.130 and 552.137 of the Government Code.² Because sections 552.101, 552.117, 552.130, and 552.137 can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of these exceptions. We will also address your argument under section 552.108 for the information that was timely submitted.

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:

...

(8) any request for leave by the officer[.]

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). You have identified a portion of the submitted information as the named officer’s personnel records. We note that the information at issue includes the officer’s requests for leave. Therefore, this information, which we have marked, is subject to subsection 411.00755(b)(8), and may not be withheld under section 411.00755. However, based on your representations and our review of the information at issue, we agree that except for the marked leave requests, the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code.

Next, you claim the submitted video recordings are excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted video recordings pertain to ongoing criminal cases. Based upon this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston[14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the submitted video recordings may be withheld pursuant to section 552.108(a)(1) of the Government Code.

Section 552.117(a)(2) excepts from public disclosure a peace officer’s home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information we have marked in the remaining information under section 552.117(a)(2) of the Government Code. However, no portion of the remaining information that you have highlighted in yellow constitutes the home address, home telephone number, social security number, or family member information of a peace officer. Accordingly, you may not withhold any of the remaining information at issue under section 552.117.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license or driver’s license issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1). Therefore, the department must withhold the Texas driver’s license information we have marked in the remaining information under section 552.130.

Section 552.137 of the Government Code provides that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). The e-mail addresses we have marked are not of the type specifically excluded by section 552.137(c). Accordingly, the marked e-mail addresses must be withheld under section 552.137 of the Government Code, unless the owner of an e-mail address consents to its disclosure.

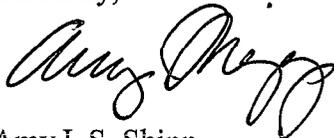
In summary, except for the marked leave requests, the department must withhold the personnel file records you have marked under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code. The department may withhold the submitted video recordings under section 552.108 of the Government Code. The

department must withhold the information we have marked under sections 552.117 and 552.130 of the Government Code. The department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner of an e-mail address has consented to its release.³ The remaining information must be released.

You ask this office to issue a previous determination permitting the department to withhold the personnel records of commissioned officers under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/tp

Ref: ID# 382856

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We 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 a Texas driver's license number under section 552.130 of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.