



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2010

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

OR2010-13622

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# 393219 (ORA# 10-1405).

The Texas Department of Public Safety (the "department") received a request for the personnel file of a named officer. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You seek to withhold a portion of the submitted information, which you have indicated, under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code. We note this office recently issued Open Records Letter No. 2010-12863 (2010), a previous determination authorizing the department to withhold personnel records

¹Although you raise section 552.1175 of the Government Code for portions of the submitted information, we note section 552.117 is the correct exception for information the department holds in its capacity as an employer. Further, the department acknowledges it failed to timely assert its claims under sections 552.130 and 552.137 of the Government Code. See Gov't Code § 552.301(b). Because sections 552.130 and 552.137 can provide compelling reasons to withhold information, we will consider your arguments under these sections. 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, 381-82 (Tex. App.—Austin 1990, no writ); see also Open Records Decision No. 630 (1994).

of commissioned officers of the department under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code, unless the exceptions to confidentiality listed in subsections 411.00755(b)(1)-(12) or the release provisions listed in subsection 411.00755(c) are applicable. *See* Gov't Code § 411.00755(b)(1)-(12), (c). The information at issue does not contain any of the types of information listed in subsections 411.00755(b)(1)-(12), and the release provisions in subsection 411.00755(c) do not apply. Therefore, pursuant to Open Records Letter No. 2010-12863, 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. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

You claim sections 552.117, 552.130, and 552.137 of the Government Code for portions of the remaining information. 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.

Section 552.130 of the Government Code 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. *Id.* § 552.130(a)(1), (2). Upon review, we find portions of the remaining information consist of Texas motor vehicle record information. Accordingly, the department must withhold the Texas motor vehicle record information we have marked within the remaining information under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Accordingly, the department must withhold the personal e-mail address you have marked under section 552.137 of the Government Code, unless the owner has affirmatively consented to its public disclosure.

In summary, the department must withhold the information you have indicated pursuant to the previous determination issued by this office in Open Records Letter No. 2010-12863. Within the remaining information, the department must withhold (1) the information we have

marked under section 552.117(a)(2) of the Government Code; (2) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code; and (3) the personal e-mail address you have marked under section 552.137 of the Government Code, unless the owner has affirmatively consented to its public disclosure. The remaining 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, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

Ref: ID# 393219

Enc. Submitted documents

c: Requestor
(w/o enclosures)