



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2010

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

OR2010-13814

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# 393410 (ORA# 10-1431).

The Texas Department of Public Safety (the "department") received a request for (1) calibration and maintenance records for specified speed-measuring equipment; (2) maintenance records for a specified department vehicle; (3) the dashboard camera video recording of a specified incident; and (4) a named officer's personnel records. You state the department has provided the requested speed-measuring equipment records and video recording to the requestor. You claim the submitted personnel records 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.

Initially, we note you have not submitted information responsive to the requested maintenance records for a specified vehicle. To the extent information responsive to that part of the request existed on the date the department received the request, we assume you have released it. If you have not released any such information, you must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if

¹Although you cite to section 552.1175 of the Government Code for a portion of the information you seek to withhold, we note section 552.117 of the Government Code is the correct exception for the substance of your argument.

governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, you acknowledge, and we agree, the department failed to request a ruling within the statutory time period prescribed by section 552.301(b) of the Government Code. *See Gov't Code* § 552.301(b). 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 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, 381-82 (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); see also Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because sections 552.101, 552.117, 552.130, and 552.137 of the Government Code can provide compelling reasons to withhold information, we will consider their applicability to the submitted information.

You assert a portion of the submitted personnel records is excepted under 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 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). You state the personnel records you seek to withhold do not contain any of the types of information listed in subsections 411.00755(b)(1)-(12), and there is no indication the release provisions in subsection 411.00755(c) are applicable in this instance. Therefore, pursuant to Open Records Letter No. 2010-12863, the department must withhold the personnel records 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, facts, 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 portions of the remaining personnel records are excepted under sections 552.117, 552.130, and 552.137. Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024

and 552.1175 of the Government Code.² Gov't Code § 552.117(a)(2). Upon review, we agree the peace officer's home address, home telephone number, and social security number you have marked must be withheld under section 552.117(a)(2) of the Government Code.³

Section 552.130 of the Government Code provides information that relates to a motor vehicle operator's or driver's license issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1). The department must withhold the Texas driver's license number and type you have marked 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 you have marked in the remaining information is not specifically excluded by section 552.137(c). As such, this e-mail address must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

In summary, in accordance with Open Records Letter No. 2010-12863, the department must withhold a portion of the personnel records at issue under section 552.101 of the Government in conjunction with section 411.00755(b) of the Government Code. From the remaining personnel records, the department must withhold the marked peace officer's home address, home telephone number, and social security number under section 552.117(a)(2) of the Government Code; Texas driver's license number and type under section 552.130 of the Government Code; and e-mail address under section 552.137 of the Government Code, unless the owner consents to its release.⁴ The remaining information must be released.

²"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

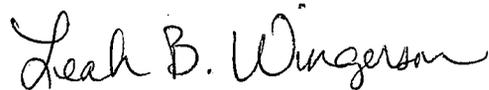
³We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes all governmental bodies to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code, without the necessity of requesting an attorney general decision. Furthermore, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

⁴We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls.

Ref: ID# 393410

Enc. Submitted documents

c: Requestor
(w/o enclosures)