



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2010

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

OR2010-14352

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# 394518 (ORA # 10-1511).

The Texas Department of Public Safety (the "department") received a request for the personnel files of four former department officers. You state some responsive information has been destroyed pursuant to the department's records retention policy.¹ You also state that you have released some of the requested information. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has excluded from the request social security numbers, medical records, and financial records. Thus, any such information is not responsive to the request. This decision does not address the public availability of non-responsive information, and that information need not be released. Therefore, we do not address your claim under section 552.1175 of the Government Code regarding social security numbers.

We next 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

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 indicate the information at issue does 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 information you have marked 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). As you raise no other exceptions to disclosure, the remaining responsive information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 394518

Enc. Submitted documents

c: Requestor
(w/o enclosures)