



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2010

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

OR2010-14746

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# 395022 (ORA # 10-1629).

The Texas Department of Public Safety (the "department") received a request for the personnel file of a named former officer. You claim some of the submitted information is 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.

Section 552.101 of the Government Code 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:

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.

(1) any letter, memorandum, or document relating to:

...

(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 have identified a portion of the submitted information as the named officer’s personnel records. This office recently issued Open Records Letter No. 2010-12863 (2010), a previous determination to the department authorizing it to withhold, with the exception of the information listed in subsections 411.00755(b)(1)-(12), the personnel records of commissioned officers of the department under section 411.00755(b) of the Government Code, without the necessity of requesting an attorney general decision. *See* Open Records Decision No. 673 (2001) (previous determinations generally). However, we note that the information you seek to withhold under section 411.00755 issue includes a letter relating to the officer’s suspension. This information, which we have marked, is subject to subsection 411.00755(b)(1)(B). The marked information may not be withheld under section 411.00755 and is not encompassed by the previous determination issued to the department in Open Records Letter No. 2010-12863. However, based on your representations and our review of the information at issue, we agree that except for the information we have marked under subsection 411.00755(b)(1)(B), 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 pursuant to the previous determination issued to the department in Open Records Letter No. 2010-12863.

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. We note that a post office box number is not a “home address” and therefore may not be withheld under section 552.117.² We also note this section does not apply to an individual’s work telephone number. Accordingly, except for the information we have marked for release, the department must withhold the highlighted information in the remaining submitted documents under section 552.117(a)(2) of the Government Code. However, no portion of the remaining information that you have

²*See* Gov’t Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

highlighted 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 under section 552.117.

Section 552.130 of the Government Code excepts from disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” *Id.* § 552.130(a)(1). Accordingly, the department must withhold the Texas driver’s license information you have marked under section 552.130.

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), (b). The e-mail address you have marked in the remaining information is not of a type specifically excluded by section 552.137(c). *See id.* § 552.137(c). Therefore, the department must withhold the marked e-mail address under section 552.137 of the Government Code, unless its owner consents to its release.³

In summary, with the exception of the information we have marked under subsection 411.00755(b)(1)(B), the department must withhold the information you have marked under section 411.00755 of the Government Code pursuant to the previous determination issued to the department in Open Records Letter No. 2010-12863. Except for the information we have marked for release, the department must withhold the information we have marked under section 552.117 of the Government Code. The department must withhold the driver’s license information you have marked under section 552.130 of the Government Code and the e-mail address you have marked under section 552.137 of the Government Code, unless its owner consents to its release. The remaining 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,

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.

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, appearing to read "Amy Shipp".

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

ALS/tp

Ref: ID# 395022

Enc. Submitted documents

c: Requestor
(w/o enclosures)