



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2010

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

OR2010-15794

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# 397179 (ORA# 10-1808).

The Texas Department of Public Safety (the "department") received a request for the employment application, awards, training, reprimands, complaints, disciplinary actions, performance evaluations, educational background, promotions, professional qualifications and other information relating to a named commissioned department officer. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.1175, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has excluded from her request L-2 and L-3 forms, family member information, financial information, medical records, fingerprints, personal automobile insurance cards, military records, birth certificates, test questions and answers, physician information, blood type, emergency contacts, health insurance and retirement enrollment forms, purpose for requested time off, social security numbers, dates of birth, home addresses, home telephone numbers, and driver's license numbers. Any such information is therefore not responsive to the present request for information. The department need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we must address the department's procedural obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). You state the department received the present request for information on July 22, 2010. Thus, the department's ten-business-day deadline under section 552.301(b) was August 5, 2010. However, you did not submit your request for a ruling until August 12, 2010. Consequently, we find the department failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the information is public and must be released. Information that is 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). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). Because sections 552.101, 552.1175, 552.130, and 552.137 of the Government Code can provide compelling reasons to withhold information, we will consider your arguments under these exceptions.

We note a portion of the information in Exhibit 1 is subject to section 552.130 of the Government Code.¹ Section 552.130 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[.]" Gov't Code § 552.130(a)(1). Therefore, the department must withhold the Texas motor vehicle record information we have marked in Exhibit 1 pursuant to section 552.130 of the Government Code.

Finally, we note this office 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 indicate the submitted information in Exhibit 2 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. We note, however, some of the documents in Exhibit 2 record a promotion of the officer at issue. This information, which we have marked, is subject to subsection 411.00755(b)(7). That

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. As you raise no other exception to disclosure, the department must release this information, which we have marked. Pursuant to Open Records Letter No. 2010-12863, the department must withhold the remaining information in Exhibit 2 under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code.² 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).

In summary, the department must withhold the Texas motor vehicle record information we have marked in Exhibit 1 pursuant to section 552.130 of the Government Code. Except for the information we marked for release pursuant to section 411.00755(b)(7) of the Government Code, the department must withhold the information in Exhibit 2 under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code and in accordance with Open Records Letter No. 2010-12863.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

²As we are able to make this determination, we need not address your submitted arguments against disclosure of the submitted information.

Ref: ID# 397179

Enc. Submitted documents

c: Requestor
(w/o enclosures)