



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2010

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78765-4087

OR2010-15996

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# 397560 (ORA #10-1706).

The Texas Department of Public Safety (the "department") received a request for the civil service personnel file of a named department officer. You claim that 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.

Initially, we note the requestor has excluded social security numbers, driver's license numbers, and home addresses from the request. Therefore, any such information is not responsive to the present request. The department need not release any non-responsive information in response to the request, and this ruling will not address such information.

Next, 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(b) 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 information you have marked consists of personnel records of a commissioned

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 that is held in an employment capacity is section 552.117.

officer of the department. The information you have marked 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 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, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly information it need not seek a decision from this office to withhold information in response to future requests).

Next, we note, and you acknowledge, that the department has not complied with the procedural requirements of section 552.301 of the Government Code in requesting this ruling. *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 procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.301; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). This office has held that a compelling reason exists to withhold information when the information is confidential by law or affects third party interests. *See* Open Records Decision No. 150 (1977). Because sections 552.117, 552.130, and 552.137 can provide compelling reasons to withhold information, we will consider your arguments regarding these exceptions.

Section 552.117(a)(2) of the Government Code 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 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 [or] a motor vehicle title or registration issued by an agency of this state[.]" *Id.* § 552.130(a)(1), (2). Upon review, we agree the department must withhold the Texas motor vehicle record information you have marked under section 552.130.²

²We 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 Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

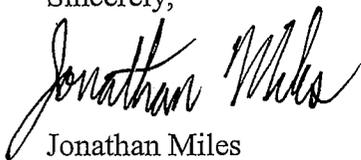
Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a), (b). Upon review, however, we find none of the remaining information contains an e-mail address. Therefore, none of the remaining information may be withheld pursuant to section 552.137 of the Government Code.

In summary, 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 pursuant to Open Records Letter No. 2010-12863. The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The department must also withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code. The remaining responsive 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 397560

Enc. Submitted documents

c: Requestor
(w/o enclosures)