



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2010

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78733-0001

OR2010-19552

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# 404458 (ORA # 10-2316).

The Texas Department of Public Safety (the "department") received a request for the internal affairs investigation of a named former officer, any other complaints made regarding the individual and his "use of excessive force or lack of courtesy in dealing with the public," and any other reprimands or actions pertaining to the former officer. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 94-605 (1994). In that ruling, we concluded the department must release the requested information. We note since the issuance of Open Records Letter No. 94-605, the legislature enacted section 411.00755 of the Government Code, which addresses personnel records of a commissioned officer of the department. *See* Act of April 25, 2007, 80th Leg., R.S. ch. 35, § 1, 2007 Tex. Gen. Laws 33. (codified as Gov't Code § 411.00755). Thus, the law on which the previous ruling is based has changed, and the department may not continue to rely on Open Records Letter No. 94-605 as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested

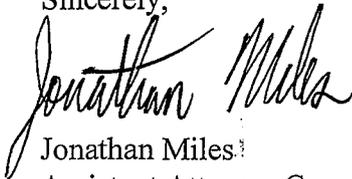
information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly we will address the department's argument against disclosure of the submitted information.

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). The submitted information does not contain any of the types of information listed in subsections 411.00755(b)(1)-(12). Furthermore, 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 submitted information 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).

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/eeg

Ref: ID# 404458

Enc. Submitted documents

c: Requestor
(w/o enclosures)