



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 21, 1997

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR97-0888

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID#105942.

The Texas Department of Public Safety (the "department") received a request for "a copy of any 'denial letter,' memorandum or other written instrument that indicates the denial of a concealed weapons permit for applicant Drew Eldred Nixon. . . ." You raise section 20 of V.T.C.S. article 4413(29ee).

V.T.C.S. article 4413(29ee) provides procedures for the department to license individuals to carry a concealed handgun. Section 20 of that article reads in pertinent part as follows:

The department shall, on written request and payment of a reasonable fee to cover costs of copying, disclose to any other individual whether a named individual or any individual whose full name is listed on a specified written list is licensed under this article. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. Except as otherwise provided by this section and by Section 21 of this article,¹ *all other records maintained under this article are confidential and are not subject to mandatory disclosure under the open records law,*

¹Section 21 requires the department to make available on request and payment of copy costs a statistical report of the number of handgun licenses issued, denied, revoked, or suspended during the preceding month, listed by age, gender, race and zip code of the applicant or license holder.

Chapter 552, Government Code, except that the applicant or license holder may be furnished a copy of such disclosable records on request and the payment of a reasonable fee.

V.T.C.S. art. 4413(29ee) § 20 (emphasis and footnote added). This provision requires the department to release to any requestor the fact that an individual whose name the requestor provides is licensed to carry a concealed handgun as well as the individual's date of birth, gender, race, and zip code. Except for certain information provided to an applicant or license holder, "all other records [the department] maintained under article [4413(29ee)] are confidential." We believe this confidentiality provision applies to a letter denying an applicant a license. *See id.* § 7 (requiring department to give written notice to each handgun license applicant of any denial, revocation or suspension of license). Thus, the department must not release to a requestor a letter denying a license to an applicant. Gov't Code § 552.101 (excepting from public disclosure information made confidential by law).

You urge that section 20 makes confidential the fact of the existence or nonexistence of a denial letter. By its terms, the provision applies to certain "records," rather than to the existence of such records. The language of a confidentiality statute controls the scope of the protection. *See* Open Records Decision No. 478 (1987) at 2. Furthermore, to fall within Government Code section 552.101, a confidentiality requirement will not be implied from the statutory structure. *See* Open Records Decision No. 465 (1987). Moreover, numerous prior decisions of this office have held that, while the content of a document might be confidential, the fact of the document itself is not protected from disclosure. *See, e.g.,* Attorney General Opinion H-223 (1974) (fact that taxpayer requested reconsideration of his tax status is public even though information concerning his status is confidential by statute); Open Records Decision No. 88 (1975) (fact of whether person had filed accident report is public, even though content of report is confidential by statute.); *see also* Open Records Decision Nos. 614 (1993), 212(1978), 102 (1978), 40 (1974). Thus, we conclude that section 20 of V.T.C.S. article 4413(29ee) does not make confidential the fact of the existence or nonexistence of a denial letter. Notwithstanding that conclusion, we note that the act does not require a governmental body to answer questions. *See* Open Records Decision No. 555 (1990).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 105942

cc: Mr. Patrick L. Woodson
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