



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2007

Ms. Pamela Smith
Assistant General Counsel
Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2007-06120

Dear Ms. Smith:

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# 278766.

The Texas Department of Safety Private Security Bureau (the "PSB") received a request for all information pertaining to investigations and inspections of a specified private investigation company. You state that you have released most of the responsive information to the requestor. You claim that the submitted 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 acknowledge that the PSB failed to comply with the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body that receives a written request for information that it wishes to withhold from disclosure pursuant to an exception under the Act must ask for an attorney general decision no later than ten business days after the date of receiving the written request. *See Gov't Code* § 552.301(a), (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 requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). As section 552.101 of the Government Code can provide a compelling reason to overcome the presumption, we will address your claim under section 552.101.

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 1702.084 of the Occupations Code. Section 1702.084 relates to public access to records of disciplinary actions “regarding a person regulated by the [PSB].” Occ. Code § 1702.084(a). Subsection 1702.084(d) provides that “[t]he [PSB] shall maintain the confidentiality of information regarding the identification of a complainant.” *Id.* § 1702.084(d). You explain that the PSB is part of the Department of Public Safety. *See id.* §§ 1702.005, .021. You state that the submitted information identifies individuals who made complaints about a company that is subject to the PCB’s authority. Based on your representations and our review of the submitted information, you must withhold the information that you have marked under section 552.101 of the Government Code in conjunction with section 1702.084 of the Occupations Code. The rest of the submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

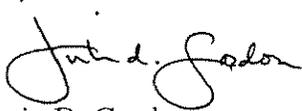
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 278766

Enc. Submitted documents

c: Ms Rhonda Shaffer
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(w/o enclosures)