



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2007

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

OR2007-13080

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# 291569.

The Texas Department of Safety Private Security Bureau ("PSB") received a request for nine categories of information related to an investigation conducted by PSB, and for personnel records of certain PSB employees. You state that information responsive to categories one, three, and five through eight of the request has been or will be released to the requestor. You also state that you do not have any documents responsive to category nine of the request.¹ You claim that some of the remaining requested information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note and you acknowledge, that PSB has not complied with section 552.301(e) of the Government Code in submitting the responsive information accompanying your letter dated September 28, 2007. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

App.— Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. See Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Generally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). PSB's claim under section 552.101 can provide a compelling reason to withhold information, and we will therefore consider your arguments regarding this exception for both the information submitted with your letter dated September 28, 2007, and for the information timely submitted.

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). We understand that PSB is part of the Department of Public Safety. See *id.* §§ 1702.005, .021. You state that some of the submitted information pertains to the investigation of complaints against individuals and a company subject to PSB's authority. You also state that information in the complaint investigation files identifies the complainants. Based on your representations and our review of the submitted information, we agree that PSB must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 1702.084 of the Occupations Code.

You claim that some of the remaining information is subject to chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Section 411.083 of the Government Code deems confidential CHRI that the department maintains, except that the department may disseminate this information as provided in chapter 411, subchapter F of the Government Code. See Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the department or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. See generally *id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from the department or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. However, information relating to routine traffic violations is not excepted from release under section 552.101 of the Government Code on this basis. Cf. Gov't Code § 411.082(2)(B). We note that you have submitted information reflecting routine

traffic violations. Thus, PSB may not withhold any of this information, which we have marked, under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. Except for the records we have marked for release, PSB must withhold the CHRI you have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Finally, you note that the remaining information contains social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under Act. Therefore, PSB may withhold the social security numbers you have marked under section 552.147 of the Government Code.²

In summary, PSB must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 1702.084 of the Occupations Code. Except for the records we have marked for release, PSB must withhold the CHRI that you have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The marked social security numbers may be withheld under section 552.147 of the Government Code. The remaining 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

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

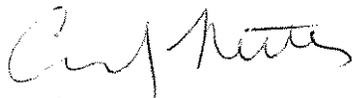
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 291569

Enc. Submitted documents

c: Mr. William S. Marks
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(w/o enclosures)