



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2009

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

OR2009-11755

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# 352832 (OR 09-0967).

The Texas Department of Public Safety (the "department") received a request for information related to a specified investigation. You state the department does not possess the requested video footage.¹ You claim 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. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. The department need not release non responsive information in response to this request and this ruling will not address that information.

¹The Act does not require a governmental body that receives a request for information to create responsive information or obtain information that is not held by or on behalf of the department. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978 writ dism'd); Open Records Decision No. 452 at 3 (1986).

Next, you acknowledge the department failed to meet the ten-business-day deadline prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See id.* § 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. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness. Therefore, we will address your argument under this exception.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information other statutes make confidential. Section 411.00755 of the Government Code states in pertinent part:

(b) Notwithstanding Chapter 552, the personnel records of a commissioned officer of the department may not be disclosed or otherwise made available to the public, except the department shall release:

(1) any letter, memorandum, or document relating to:

...

(B) misconduct by the officer, if the letter, memorandum, or document resulted in disciplinary action[.]

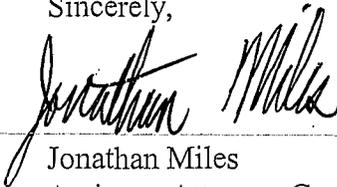
Id. § 411.00755. Section 411.00755 defines a personnel record, in part, as "any letter memorandum, or document maintained by the department that relates to a commissioned officer of the department[.]" *Id.* For the purpose of section 411.00755, "disciplinary action" means discharge, suspension, or demotion. *Id.* § 411.0072(a)(1).

You claim the responsive information consists of documents related to an internal investigation that did not result in the discharge, suspension, or demotion of any department officer. Based on your representation and our review of the information at issue, we conclude the department must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code.

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 at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Miles", is written over a horizontal line.

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 352832

Enc. Submitted documents

c: Requestor
(w/o enclosures)