



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2010

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

OR2010-06710

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# 378752 (OR 10-0480).

The Texas Department of Public Safety (the "department") received a request for a list of all licensed security consulting companies, as well as the business contact information associated with these companies. You state some information has been released to the requestor. You claim that portions of the submitted information are 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 received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the department's obligations under section 552.301 of the Government Code which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. The department acknowledges, and we agree, that it failed to comply with the procedural requirements of section 552.301. 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.* Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). 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). Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will consider the applicability of this exception to the requested information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 1702.085 of the Occupations Code, which provides as follows:

Records maintained by the department under this chapter on the home address, home telephone number, driver's license number, or social security number of an applicant or a license holder, registrant, or security officer commission holder are confidential and are not subject to mandatory disclosure under Chapter 552, Government Code.

Occ. Code § 1702.085. You state that portions of the submitted information, which you have highlighted, may constitute the home addresses of license holders that are maintained by the department under chapter 1702 of the Occupations Code. *See id.* §§ 1702.004, .005 (granting the department, through the Texas Private Security Board, power to license and regulate investigations companies and security services contractors). You contend that, in some instances, the home and business addresses of such license holders may be the same address. We note that the submitted information also includes telephone numbers of license holders that may be home telephone numbers maintained by the department under chapter 1702 of the Occupations Code. Thus, we find that to the extent the addresses you have highlighted, and the telephone numbers we have marked, are home addresses and telephone numbers of license holders maintained by the department under chapter 1702, this information must be withheld under section 552.101 of the Government Code in conjunction with section 1702.085 of the Occupations Code. However, to the extent the highlighted and marked information does not constitute home addresses and telephone numbers maintained under chapter 1702, section 1702.085 is not applicable to this information, and it must be released to the requestor.

You assert that determining which portions of the submitted information constitute business contact information rather than home contact information, for purposes of determining what information in the submitted list is confidential under section 1702.085, would require the department to contact each licensee for clarification. You further state that distinguishing between home and business contact information would require the department to create a new list of licensees. We agree the Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983). However, a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561 (1990). Moreover, a governmental body may not refuse to comply with a request on the ground of

administrative inconvenience. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with predecessor of Act does not determine availability of information); Open Records Decision No. 497 (1988). In this case, the department has submitted responsive information for our review. We consider the department to have made a good faith effort to identify the information that is responsive to the request. In addition, it is clear that confidential home contact information could be redacted from the existing list that you have submitted as responsive to the request. Therefore, we conclude that distinguishing between home and business contact information would not, as you assert, require the creation of a new document. Further, we find that the administrative inconvenience of determining which addresses are confidential does not provide a basis for the department to withhold all of the submitted addresses and phone numbers, to include any not made confidential under section 1702.085.

Accordingly, to conclude, to the extent the addresses you have highlighted, and the telephone numbers we have marked, are home addresses and telephone numbers of license holders maintained by the department under chapter 1702, this information must be withheld under section 552.101 of the Government Code in conjunction with section 1702.085 of the Occupations Code. However, to the extent the highlighted and marked information does not constitute home addresses and telephone numbers maintained under chapter 1702, section 1702.085 is not applicable to this information, and it must be released to the requestor. In either case, the remaining information must be released to the requestor.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 378752

Enc. Submitted documents

c: Requestor
(w/o enclosures)