



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 25, 2011

Ms. Jennifer C. Cohen  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773

OR2011-02854

Dear Ms. Cohen:

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# 410157 (ORA # 10-2794 and 11-0284).

The Texas Department of Public Safety (the "department") received two requests for information related to a motor vehicle accident involving the first requestor's clients and a department officer that occurred on October 30, 2010. You provide documentation reflecting the department has released a portion of the requested information to the requestors. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, the department did not fully comply with section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). While the department raised section 552.103 of the Government Code within the ten-business-day time period as required by subsection 552.301(b), the department did not raise section 552.101 of the Government Code until after the ten-business-day deadline had passed. Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary

exceptions). However, mandatory exceptions to disclosure cannot be waived by a governmental body. See Gov't Code § 552.352; Open Records Decision No. 574 at n.4 (2001) (mandatory exceptions). Section 552.101 of the Government Code is a mandatory exception to disclosure that can provide a compelling reason to withhold information for purposes of section 552.302. Therefore, we will consider the applicability of this section to the submitted information. We will also consider the applicability of your timely-raised exception.

Next, we note the submitted information is subject to section 552.022(a)(1) of the Government Code, which provides:

the following categories of information are public information and not excepted from required disclosure under [the Act] unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of the department's investigation of the accident at issue that reflects it was completed by the department on November 22, 2010. Accordingly, we conclude this information is a completed investigation subject to section 552.022(a)(1) of the Government Code. Although you assert this information is excepted under section 552.103 of the Government Code, that section is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). As such, section 552.103 is not "other law" that makes information confidential for purposes of section 552.022. Therefore, none of the submitted information may be withheld under section 552.103 of the Government Code. You also raise section 552.101 of the Government Code for portions of the submitted information. Because that section is "other law" for purposes of section 552.022, we consider your argument under section 552.101. Additionally, we note portions of the submitted information are subject to sections 552.130 and 552.137 of the Government Code, which are "other law" for purposes of section 552.022.<sup>1</sup> Thus, we will consider the applicability of those exceptions to the submitted information.

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

You claim some of the submitted information is subject to a previous determination issued to the department. Open Records Letter No. 2010-12863 (2010) is a previous determination authorizing the department to withhold personnel records of commissioned officers of the department under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code, unless the exceptions to confidentiality listed in subsections 411.00755(b)(1)-(12) or the release provisions listed in subsection 411.00755(c) are applicable. *See* Gov't Code § 411.00755(b)(1)-(12), (c). In this instance you state the submitted HQ-12 Incident Report, OAI-14 Report of Fleet Occurrence, and related memoranda, which you have marked, are personnel records subject to section 411.00755. You do not indicate these documents contain any of the types of information listed in subsections 411.00755(b)(1)-(12), and there is no indication the release provisions in subsection 411.00755(c) are applicable in this instance. Therefore, pursuant to Open Records Letter No. 2010-12863, the department must withhold the HQ-12 Incident Report, OAI-14 Report of Fleet Occurrence, and related memoranda you marked under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, facts, and circumstances have not changed, decision concludes specific, clearly delineated category of information is exempted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

Section 552.130 of the Government Code exempts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the information we marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code exempts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address we marked in the remaining information is not specifically excluded by section 552.137(c). As such, this e-mail address must be withheld under section 552.137, unless its owner affirmatively consents to its release. *See id.* § 552.137(b).

In summary, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code pursuant to Open Records Letter No. 2010-12863. The department must also withhold the information we marked under section 552.130 of the Government Code and, unless its owner consents to its release, the e-mail address we marked under

section 552.137 of the Government Code.<sup>2</sup> The remaining submitted information must be released.

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](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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tf

Ref: ID# 410157

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers, license plate numbers, and the portions of photographs revealing license plate numbers under section 552.130 of the Government Code, and private e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.