



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2014

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

OR2014-08002

Dear Ms. Cost:

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# 522623 (PIR# 14-0759).

The Texas Department of Public Safety (the "department") received a request for the underlying information on all convictions in which the defendant was a concealed handgun license holder over a specified time period. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from a representative of the requestor. See Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we address the requestor's assertion the department should possess information of a different type than that submitted to this office. We note the Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). Whether the department has information of a different type than that submitted to this office is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Accordingly, we must accept the department's representation that it has no information of a different type than that submitted to this office. We note 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 at 8-9 (1990). We assume the department has made a good-faith effort to do so.

You argue the information at issue consists of records maintained by the department pursuant to subchapter H of chapter 411 of the Government Code which are confidential under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code, and may be withheld pursuant to the previous determination issued to the department in Open Records Letter No. 2013-06148 (2013).² *See* Gov't Code §§ 411.171–.208 (governing licenses to carry concealed handguns). That ruling is a previous determination authorizing the department to withhold under section 552.101 of the Government Code information held by the department that is made confidential under section 411.192 of the Government Code, if the information does not fall under section 411.193 of the Government Code and none of the other exceptions to confidentiality under section 411.192 of the Government Code apply. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Upon review, we agree the information at issue does not fall under section 411.193 of the Government Code, and none of the other exceptions to confidentiality under section 411.192 of the Government Code apply. Therefore, the department must withhold the concealed handgun license information at issue under section 552.101 in conjunction with section 411.192 of the Government Code in accordance with the previous determination issued to the department in Open Records Letter No. 2013-06148.

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.

²Section 552.101 of the Government Code exempts 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 protected by other statutes, such as section 411.192 of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Neal', written in a cursive style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 522623

Enc. Submitted documents

c: Requestor
(w/o enclosures)