



April 2, 2001

Ms. Pam Liston
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR2001-1288

Dear Ms. Liston:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145538.

The City of Rowlett (the "city"), which you represent, received a request for a named officer's records relating to his training in speed limit enforcement, the officer's daily log and radar log for a specified date, information relating to a speed-measuring device, a copy of a speeding ticket, and a copy of the city's zero tolerance zone rule. You state that the only responsive information the city possesses is the traffic ticket and the make and serial numbers of the specified radar gun and tuning fork. You claim that this information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that the requestor indicated in a letter to this office, dated February 12, 2001, that the city did not send her a written statement indicating it wished to withhold the requested information as required by section 552.301(d) of the Government Code. Section 552.301(d) provides:

A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

- (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

The city indicated in its initial letter requesting a decision from this office that it sent a copy of the letter to the requestor. This letter indicates on its face that the city wishes to withhold the requested information under section 552.103 and is asking for a ruling from this office. Thus, we are faced with a factual dispute between the city and the requestor regarding whether the requestor received the appropriate notification under section 552.301(d). We cannot resolve disputes of fact in the open records process, and therefore, we must rely on the representations of the governmental body requesting our opinion. Open Records Decision Nos. 554 (1990), 552 (1990). Based on the city's representations, we conclude that the city complied with the requirements of section 552.301(d).

However, the city did not comply with the requirements of section 552.301(e) of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Although you submitted to this office a copy of the traffic ticket, you did not submit a copy of the information relating to the speed measuring device. Rather, you describe the information relating to the speed measuring device in your brief. This is insufficient to meet the requirements of section 552.301(e). Because you did not submit a copy of the information relating to the speed measuring device, we must presume that this information is public and must be released. Gov't Code § 552.302. 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.103 of the Government Code is a discretionary exception and does not provide a compelling reason for overcoming the presumption of openness. Accordingly, you must release the requested information relating to the speed measuring device.

With respect to the submitted traffic ticket, we first note that the ticket may be subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(17) information that is also contained in a public court record

If the traffic ticket has been filed in a public court record, it is subject to public disclosure unless confidential under other law. Section 552.103 is not "other law" for purposes of section 552.022. Furthermore, while the ticket contains Texas driver's license and license plate information that would normally be considered confidential under section 552.130 of the Government Code, the requestor has a special right of access to her own driver's license and license plate information. *See* Gov't Code § 552.023. Therefore, if the ticket has been filed in a court, you must release it in its entirety to the requestor.

To the extent the traffic ticket is not filed with a court, we address the city's argument that the ticket is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under 552.103(a).

You state that the requestor received a traffic ticket from a city police officer and that the case regarding the ticket is currently pending in municipal court. Therefore, you have adequately demonstrated that litigation is pending between the city and the requestor. Furthermore, we agree that the traffic ticket relates to the pending litigation.

However, section 552.103 does not protect information once it has been obtained by all parties to the litigation through discovery or otherwise. Open Records Decision Nos. 349 (1982), 320 (1982). Here, it appears the requestor has already seen at least a portion of the submitted traffic ticket. To the extent the requestor has already been seen the traffic ticket, the ticket is not protected by section 552.103 and must be released. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the city must release the responsive information relating to the speed measuring device. Furthermore, the city must release the submitted traffic ticket to the extent it has been filed with a court. If the ticket has not been filed with a court, the city may withhold the ticket under section 552.103 to the extent it has not already been seen by the requestor.

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).

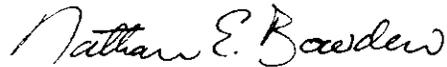
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 General Services Commission 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,

A handwritten signature in cursive script that reads "Nathan E. Bowden".

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 145538

Encl: Submitted documents

cc: Ms. Tamara Brenner
3328 Chaney Lane
Plano, Texas 75093
(w/o enclosures)