



September 19, 2002

Mr. Brendan Hall
City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2002-5295

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168214.

The Harlingen Police Department (the "department") received a request for misdemeanor traffic citations held by the department on a particular day. You assert that the requested information is not subject to the Public Information Act (the "Act"). You alternatively contend that portions of the requested information are excepted from required public disclosure pursuant to section 552.101 of the Government Code. We have considered your claims and reviewed the submitted information.¹ We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

We first consider whether the requested information is subject to the Act. The Act requires the public release of "public information." "Public information" means information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by a governmental body, or for a governmental body where the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(1), (2). Section 552.003(b) of the Government Code excludes the judiciary from the Act. Therefore, the Act neither authorizes information held by the judiciary to be withheld nor requires it be disclosed. *See* Open Records Decision No. 25 (1974).

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

You argue that the citations are not subject to the Act as records of the judiciary. You state that the citations “are not kept or maintained by the [d]epartment” and that there are no “citations to be made available for the [requestor’s] review.” You also inform us that after a citation is issued to a violator, “the remaining copies are placed in the Municipal Court’s pick up box at the end of each officer’s shift, and all copies in the Municipal Court box are picked up at approximately 7:00 a.m. the next morning by the Court bailiff and become the Municipal Court’s records.” Furthermore, in a letter to our office dated September 13, 2002, Ms. Jane Stout, the manager of the department’s Records Division, elaborates on the path the citations follow after issuance by department officers. After issuance, the citation is placed in the issuing officer’s supervisor’s in-box. At the end of the supervisor’s shift, the citations are gathered and delivered to the Records Division. There, the citations are counted and categorized. After the counting and classification have taken place, and, on the same day, the citations are placed in a box for pick up by the Municipal Court bailiff. The citations are then collected by the Municipal Court bailiff and taken to the Municipal Court for processing and disposition.

Based on your representations and our review of the submitted information, we believe that the police department “collected” and “assembled” the citations, and “maintained” the citations at least until their transfer to the Municipal Court. It would be inconsistent with the language of the Act to conclude that the Act does not apply to information collected by a governmental body simply because the information was intended to be transferred to another entity. *See* Open Records Decision 519 at 4 (1989). Thus, during that time the department possesses the citations, however brief, we find that the citations are subject to the Act. *See* Gov’t Code § 552.003. As we find that the submitted records are subject to the Act, we address your arguments under section 552.101.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* This office has determined that, absent special circumstances, home telephone numbers are not considered to be a highly intimate or embarrassing fact, notwithstanding the fact that the disclosure could increase the risk of possible intrusion upon the solitude or seclusion of the person in his home. *See* Open Records Decision Nos. 455 (1987), 169 (1977). You have not demonstrated that in this case special circumstances exist which warrant the protection of the home telephone numbers in the citations requested. Thus, we do not believe the home telephone numbers in the submitted citations are protected from public disclosure based on the common-law right to privacy.

However, some of the information in the citations is subject to section 552.130, which exempts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, the department must withhold the driver's license and license plate numbers from public disclosure pursuant to section 552.130.

Finally, you argue that compliance with the request would be an "extremely difficult, expensive, and onerous burden on the already overworked Police Department records staff." You also indicate that providing the requestor access to the citations will interrupt the flow of documents to the Municipal Court. A governmental body may not consider the cost or difficulty of compliance with a request when determining whether such information should be disclosed. See *Industrial Foundation* at 687. Any questions about permissible costs of providing access to the requested information should be directed to the Texas Building and Procurement Commission, as discussed on page 4 of this ruling.

In summary, the department must withhold the motor vehicle information, which we have marked, under section 552.130. The remaining information must be released to the requestor as discussed above.

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 Department of Public 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 168214

Enc: Submitted documents

c: Mr. M. B. Wansey
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(w/o enclosures)