



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

Ms. Moira Parro
Assistant District Attorney
Dallas County
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2004-3624

Dear Ms. Parro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199798.

Dallas County (the "county") received a request for "any and all parking records for the Dallas County criminal court judges for the months of June 2003 through January 26, 2004." You contend that these parking records are not subject to the Public Information Act (the "Act") pursuant to section 552.003 of the Government Code. You argue, alternatively, that the parking records are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You submitted representative samples of the records at issue to this office for review.¹

The Act, chapter 552 of the Government Code, governs the release of public information collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by or for a governmental body. Gov't Code § 552.002. Section 552.003(1)(B) provides that the definition of "governmental body" for purposes of the Act does not include the judiciary. You assert that the requested parking records are records of the judiciary and thus are not subject to the Act. In support of your argument, you refer to the Texas Supreme Court *per curiam* opinion for Miscellaneous Docket No. 97-9141 (issued August 21, 1997), which determined that Supreme Court telephone billing records are judicial records not subject to access under the Act. We note that the telephone billing

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.

records at issue were collected and were being maintained for the court by the General Services Commission ("GSC"), in GSC's capacity as an agent of the court. However, in this situation, the parking records at issue are records of the county that are being maintained for the county, rather than records of the judiciary. As the county is a governmental body for purposes of the Act, and county records are generally subject to the Act, we will address your arguments that the parking records are otherwise protected from disclosure. *See* Open Records Decision Nos. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ), administrative records reflecting day-to-day management of community supervision and corrections department are subject to Act), 204 at 3 (1978) (information held by county judge is subject to Act except to extent it pertains to cases and proceedings before county court).

Initially, however, we must address your obligations under the Act. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You indicate that the county received the present request for information on January 27, 2004. Accordingly, you were required to submit your request for a decision from this office no later than February 10, 2004. Your request was postmarked on February 11, 2004. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302.

The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Although you raise section 552.108, you have not demonstrated a compelling reason to withhold the information at issue under section 552.108. *Id.* Accordingly, we find you have waived your claim under section 552.108 in this instance and we determine that none of the information at issue may be withheld under section 552.108.

You also claim that the information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right to privacy. The common-law right to privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In Open Records Decision No. 169 (1977), this office concluded that under certain "special circumstances," privacy under section 552.101 will protect information that ordinarily would be subject to public disclosure. *Id.* at 6-7. However, such "special circumstances" encompass a very narrow set of situations. *Id.* at 6. "Special circumstances" do not include a mere desire for privacy or "a generalized and speculative fear of harassment or retribution." *Id.* On the other hand, they do include situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." *Id.* We determine whether a request for information presents such "special circumstances" on a case-by-case basis. *Id.* at 7.

You note that the parking records requested are for the judges who try criminal cases. You state that some of the individuals sentenced by these judges, and also other individuals, "have felt inclined to seek retribution" against these criminal court judges. In order to help ensure the safety of the criminal judges whose parking records are at issue, the county maintains a secure parking area. Another safety measure employed is the use of security checkpoints with metal detectors and x-ray machines, through which individuals entering the criminal courthouse must pass. You contend that public release of records showing a judge's usual arrival and departure time could compromise that judge's safety because "any individual bent on doing harm" to one of the judges could use the parking records to determine when a judge is likely to be arriving or leaving a secured area, and thus would be more vulnerable to attack. In this situation, we believe that you have shown that release of the requested parking records could compromise the security measures used to protect the judges and would likely cause them to face an imminent threat of physical danger. Therefore, because the request for information presents special circumstances in this case, the parking records at issue must be withheld from disclosure pursuant to section 552.101.

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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/lmt

Ref: ID# 199798

Enc. Submitted documents

c: Ms. Donna Ressler
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(w/o enclosures)