



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2004

Ms. Jennifer Barnett
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard, Suite 1800
Dallas, Texas 75201

OR2004-6022

Dear Ms. Barnett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205539.

The Richardson Police Department (the "department"), which you represent, received a request for all traffic citations "issued to all females" from January, 2002 through April, 2004, all citations "issued to all BMW models" during 2003, and all citations "issued to any and all makes or models" during 2002 and 2003. You claim that the requested documents are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. You have submitted a copy of a single citation issued to a woman on April 3, 2004, as a representative sample of the information at issue. We have considered the exceptions you claim and reviewed the submitted sample document.¹

We begin by noting your statement that the documents at issue "are responsive documents of a case investigation that the [department] has already filed with the Richardson Municipal Court." To the extent the documents at issue consist of records of the municipal court, the documents are records of the judiciary and are not subject to the Public Information Act (the

¹ We 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.

“Act”).² See Gov’t Code §§ 552.003(1)(A), (B) (definition of “governmental body” under Act specifically excludes the judiciary), .021 (Act generally requires disclosure of information maintained by “governmental body”). Thus, in the event the records at issue are maintained solely by the municipal court, they are not subject to release under the Act and need not be released in response to the present request. We note, however, that release of this information is within the discretion of the municipal court. See Open Records Decision No. 646 at 4 n. 3 (1996) (citing Open Records Decision No. 236 at 2-3 (1980)). To the extent the records at issue are maintained by the department, however, they are subject to the Act. Accordingly, we will address your claimed exceptions to disclosure with respect to information maintained by the department.

As a preliminary matter, you state “[t]he responsive documents are limited as of this correspondence because it will take much time and effort for the police department to produce all responsive documents after a diligent search.” We note that the Texas Supreme Court has determined that the difficulty of complying with a public information request is not a relevant factor in determining whether the responsive information is excepted from required public disclosure. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); see also Attorney General Opinion JM-672 (1987) (difficulty or cost of complying with public information request does not determine whether information is available to public). Because you have submitted a single citation as representative of the documents responsive to the request, we will address the applicability of your claimed exceptions to the submitted citation.³

Section 552.103 of the Government Code 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

²Records of the judiciary may be public pursuant to other sources of law. Attorney General Opinions DM-166 at 2-3 1992) (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); see *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released).

³ We also note that “[i]f a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used.” Gov’t Code § 552.222(b).

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.

Gov't Code § 552.103. A governmental body 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 was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. 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). A governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

You state that the documents at issue “are responsive documents of a case investigation that the [department] has already filed with the Richardson Municipal Court.” However, you have not provided any information showing whether the submitted citation pertains to litigation in which the department was a party that was pending or reasonably anticipated on the date the department received the present request.⁴ Thus, we find you have failed to meet your burden of showing that section 552.103 is applicable to the submitted information.⁵ We therefore determine that the department may not withhold any of the information at issue pursuant to section 552.103 of the Government Code.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

⁴ We note that the appearance date marked on the submitted citation is April 19, 2004.

⁵ Moreover, information that has been obtained by all parties to litigation is not excepted under section 552.103. *See generally* Open Records Decision Nos. 349 (1982), 320 (1982).

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a), (b). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Release of information relating to a pending criminal investigation can interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

You indicate that the documents at issue relate to a citation issued to the requestor for running a red light. You state that “release of the requested documents would interfere with investigation and prosecution of the crime, as well as future investigation, detection and prosecution of similar crimes.” We note that the submitted citation does not pertain to the violation committed by the requestor, and we find you have failed to reasonably explain how release of the submitted citation would interfere with law enforcement or prosecution in this instance. *See* Open Records Decision No. 562 at 10 (1990) (governmental body seeking to withhold information pursuant to statutory predecessor to section 552.108 must meet burden of explaining how and why release of information would interfere with law enforcement and crime prevention). Based on our review of your comments and the submitted information, we determine that you have failed to establish that the information at issue is excepted from disclosure under section 552.108. We therefore determine that the department may not withhold any of the information at issue pursuant to section 552.108.

We note that the submitted citation contains information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We have marked Texas driver's license and license plate information that the department must withhold under section 552.130 of the Government Code.

In summary, to the extent the records at issue are maintained solely by the municipal court, they are not subject to release under the Act. With respect to information maintained by the

department, we have marked information that must be withheld under section 552.130 of the Government Code. We conclude that the department must release the remainder of the information at issue to 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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. 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 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 ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'DRS', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 205539

Enc: Submitted documents

c: Ms. Virginia Petty
808 Bedell Lane
Allen, Texas 75002
(w/o enclosures)