



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2005

Mr. Steven M. Kean
Deputy City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR2005-01015

Dear Mr. Kean:

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# 217963.

The City of Tyler (the "city") received a request for (1) information relating to any indemnity policy that covers the city and the city police department for violations of constitutional rights; (2) a copy of the recorded proceedings on a specified date in a particular docket number; and (3) information relating to persons who have been convicted during a specified time interval of violations of section 545.060 of the Transportation Code or "unsafe lane change." You inform us that the city will release most of the information that is responsive to parts 1 and 2 of the request. You claim that the remaining information encompassed by those parts of the request is excepted from disclosure under section 552.136 of the Government Code. You assert that the information to which the requestor seeks access in part 3 of the request is not subject to the Act. In the alternative, you claim that information encompassed by that part of the request is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered your arguments and have reviewed the information you submitted.¹

¹This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Initially, we address your assertion that some of the requested information is not subject to the Act. As a general rule, the Act requires the disclosure of information held by or available to a "governmental body." See Gov't Code §§ 552.003(1), .021. Although the Act's definition of "governmental body" is broad, it specifically excludes "the judiciary." See *id.* § 552.003(1)(B); Open Records Decision No. 646 (1996). You represent to this office that the information to which the requestor seeks access in part 3 of his request is information that is collected, assembled, and maintained by the staff of the city municipal court for and on behalf of the municipal court. You contend that this information is therefore not subject to the Act because it constitutes records of the judiciary. Based on your representations, we agree that the information in question is not subject to the Act and need not be released to the requestor. See Open Records Decision No. 671 (2001) (information collected, assembled, or maintained for judiciary by district clerk not subject to Act). Consequently, we do not address your other arguments with regard to that information. We note, however, that as records of the judiciary, the information in question may be public under sources of law other than the Act. See Gov't Code § 552.0035; *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); 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).

Next, we address your claim under section 552.136. This exception provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We agree that the city must withhold the marked insurance policy numbers under section 552.136.

Lastly, we note that some of the remaining insurance policy information appears to be protected by copyright law. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. See Attorney General Opinion JM-672 (1987). An officer for public information also must comply with

copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary: (1) the information encompassed by part 3 of the request is not subject to the Act and need not be released; and (2) the insurance policy numbers must be withheld from the requestor under section 552.136. The rest of the submitted information must be released. In releasing information that is protected by copyright, the city must comply with copyright law.

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).

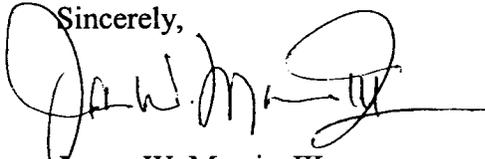
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 217963

Enc: Submitted documents

c: Mr. Robert Robinson
419 Cross Timber Road
Bullard, Texas 75757
(w/o enclosures)