



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 9, 2005

Ms. Michele Austin  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2005-08241

Dear Ms. Austin:

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# 231783.

The Houston Police Department (the "department") received a request for IAD complaint history, racial profiling forms, and work cards relating to a particular police officer and another named individual. You state that the complaint history and work cards will be released. You claim that the rest of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.<sup>1</sup>

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You contend that the requested information is made confidential by articles 2.132(e) and 2.134(d) of the Code of Criminal Procedure.

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department 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).

Article 2.132 of the Code of Criminal Procedure requires each law enforcement agency in the state to “adopt a detailed written policy on racial profiling[.]” Crim. Proc. Code art. 2.132(b). Article 2.132 further provides that the policy must “require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected[.]” *Id.* art. 2.132(b)(7). Finally, article 2.132 provides that such a required report “*may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer.*” *Id.* art. 2.132(e) (emphasis added).

Article 2.133 of the Code of Criminal Procedure provides in relevant part:

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop . . . .

*Id.* art. 2.133(b). Article 2.134 provides in part that

[a] law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133 . . . [and] shall submit a report containing the information compiled during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

*Id.* art. 2.134(b). Article 2.134 further provides that “[a] report required under Subsection (b) *may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer.*” *Id.* art. 2.134(d) (emphasis added). You explain that the requested information was created pursuant to articles 2.132 and 2.133. Based on these code provisions, you argue that although the requested information does not on its face identify a particular peace officer, the production of responsive information in this instance would identify an officer, because the requestor has asked for racial profiling information for a particular officer.

After considering your arguments and reviewing the information at issue, we agree that the release of the requested information would violate articles 2.132(e) and 2.134(d) of the Code of Criminal Procedure. The primary goal in statutory interpretation is ascertaining and effectuating the legislature’s intent. *See In re Canales*, 52 S.W.3d 698, 702 (Tex. 2001). In discerning the legislature’s intent, we begin with a statute’s plain language because we assume that the legislature tried to say what it meant and, thus, that its words are the surest guide to its intent. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999). “In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of

the statute *as it is written.*” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239 (Tex.1994)) (emphasis added). We cannot ignore or contravene legislative intent. See *McKinney v. Blankenship*, 282 S.W.2d 691 (Tex. 1955) (statute should not be construed so as to lead to foolish or absurd result); see also *State ex rel. Childress v. Sch. Trustees of Shelby County*, 239 S.W.2d 777 (Tex. 1951); *Klevenhagen v. Internat’l Fidelity Ins. Co.*, 861 S.W.2d 13 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1993) (when interpreting statute, court of appeals may consider consequences of particular construction and will presume legislature intended fair, rational, and reasonable result). Therefore, the release of this data in this instance would identify a particular peace officer and result in a violation of the code. Accordingly, we conclude that the department must withhold the requested information in its entirety under section 552.101 of the Government Code in conjunction with articles 2.132(e) and 2.134(d) of the Code of Criminal Procedure.

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).

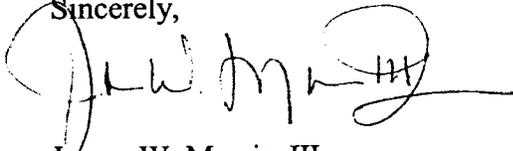
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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 "J.W. Morris III", with a long horizontal flourish extending to the right.

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

JWM/sdk

Ref: ID# 231783

Enc: Submitted documents

c: Mr. R. J. Vargas  
R. J. Vargas Investigations  
3700 North Main  
Houston, Texas 77009  
(w/o enclosures)