



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2006

Mr. Stephen Alcorn
Assistant City Attorney
City of Grand Prairie
P. O. Box 53404
Grand Prairie, Texas 75053-4045

OR2006-05035

Dear Mr. Alcorn:

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# 247927.

The Grand Prairie Police Department (the "department") received two requests from the same requestor for several categories of information regarding profiling laws, copies of tickets issued by a named officer, and information about a verbal request. You state that request categories three and four do not exist.¹ You state that some of the requested information has been provided to the requestor. You claim, however, that the requested tickets are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.²

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create information responsive information, or obtain information that is not held by or on behalf of the city. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²We 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.

Initially, we address whether the department complied with the procedural requirements of the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, the requestor sent two requests for information. You state that the first request was sent to the municipal court and never received by the department. Since the request was not sent to the department, we conclude that this request did not trigger the department's obligations under the Act. *See* Gov't Code ch. 552 (discussing a governmental body's obligations upon receiving an open records request). The second request, however, was received by the department. Since the department timely requested an attorney general decision upon receiving the second request, we will address the department's arguments concerning the submitted information. *See* Gov't Code § 552.301(b).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information another statute makes confidential. You argue that the submitted information is made confidential by articles 2.132(e) and 2.134(d) of the Code of Criminal Procedure.

Article 2.133 of the Code of Criminal Procedure (the "code") provides in relevant part as follows:

(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 . . .

Code Crim. Proc. art. 2.133(b). Article 2.134 provides in part that

(b) 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.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

Code Crim. Proc. art. 2.134(b), (c)(1)(2). 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.” Code Crim. Proc. art. 2.134(d). You argue that the information as requested would contain the identifying information of the individuals stopped or arrested by a certain officer. Thus, you state that the information at issue is confidential pursuant to article 2.134. We note, however, that in this instance the request is for the actual tickets. Article 2.134(d) makes confidential identifying information in a report required by article 2.133. *See* Code Crim. Proc. Art. 2.134(d). Here, the requestor asks for the actual tickets not for the report described in article 2.134(c). *Id.* Art. 2.134(c). Therefore, we find that the information the department seeks to withhold is not information made confidential by article 2.134(d) and it may not be withheld on that basis. *See also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public).

We note that portions of the submitted information are excepted under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure 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(a)(1), (2). Therefore, you must withhold the Texas-issued motor vehicle record information we have marked under section 552.130 of the Government Code.

We also note that the submitted information contains social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a

living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the social security numbers contained in the submitted information under section 552.147 of the Government Code.³

In summary, the department must withhold the Texas-issued motor vehicle record information we have marked under section 552.130 of the Government Code. The department must withhold the social security numbers under section 552.147 of the Government Code. The remaining information must be released.

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*, 342 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 247927

Enc. Submitted documents

c: Mr. F. B. "Lico" Reyes, President
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(w/o enclosures)