



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 20, 2007

Mr. Chris Schuchart  
Attorney At Law  
Counsel for City of LaCoste  
Post Office Box 1569  
Castroville, Texas 78009

OR2007-04519

Dear Mr. Schuchart:

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 #276207.

The City of La Coste (the "city"), which you represent, received a request for three specified police reports and a list of officers who were on or off duty on a specified date. You state that the city has no responsive list of officers.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>The 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).

<sup>2</sup>Although the city also claims that the submitted information may be excepted from disclosure under section 552.305, we note that section 552.305 is not an exception to disclosure; instead, it addresses the procedural requirements for notifying third parties that their interests may be affected by a request for information. See Gov't Code § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor).

Initially, we note that you have only submitted one of the three requested police reports. Therefore, to the extent that additional responsive information exists we assume that it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note that you have already redacted information from the submitted report, including a social security number. Pursuant to section 552.301 of the Government Code, a governmental body is prohibited from withholding information from a requestor without seeking a ruling from this office unless a statute authorizes such, or the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2000) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301 of the Government Code). Pursuant to section 552.147(b) of the Government Code, all governmental bodies may redact social security numbers without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). However, we are not aware of any law that authorizes the city to withhold any additional information without requesting a decision from this office. Further, you do not assert, nor does our review of our records indicate, that the city has been issued a previous determination authorizing it to withhold additional information without seeking a ruling from this office. Because we are able in this instance to ascertain the nature of the information that you have redacted, we will address whether you may withhold this information. In the future, however, the city should refrain from redacting any information that it submits to this office in seeking an open records ruling, unless the information at issue is subject to a previous determination issued by this office. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302. *See id.* §§ 552.301(e)(1)(D), .302.

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 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), (c). 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 section 552.103(a).

You claim that the submitted arrest report relates to a pending criminal prosecution. However, we find that the city has failed to demonstrate that it is a party to the pending criminal litigation. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating that predecessor to section 552.103 only applies when governmental body is party to litigation). Accordingly, the city may not withhold the submitted information pursuant to section 552.103 of the Government Code.

Section 552.101 encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found, however, that the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (absent special circumstances, the home addresses and telephone numbers of private citizens are generally not protected under the Act's privacy exceptions). Upon review, we find that the city has failed to demonstrate how any portion of the submitted information constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. Therefore, you may not withhold any portion of the submitted information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

We note that the submitted information contains Texas-issued motor vehicle record information that is confidential under section 552.130 of the Government Code.<sup>3</sup> In relevant part, section 552.130 provides:

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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). Upon review, the city must withhold the Texas-issued motor vehicle record information we have marked in the submitted documents under section 552.130 of the Government Code.

In summary, the city must withhold the Texas-issued motor vehicle record information we have marked under section 552.130 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*, 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. 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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eb

Ref: ID# 276207

Enc. Submitted documents

c: Mr. Juan Avila  
15877 Buchel Street  
La Coste, Texas 78039  
(w/o enclosures)