



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2008

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
300 East Main Street
Round Rock, Texas 78661-5246

OR2008-05074

Dear Ms. Camp-Lee:

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# 307651.

The City of Hutto (the "city"), which you represent, received two requests from the same requestor for information pertaining to a specified radar unit and the officer operating the radar unit. The requestor also seeks a copy of all citations that were issued while using the specified radar unit during a specified time period. You state that you do not have information responsive to portions of the requests.¹ You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

We first address your contention that the requests were not valid requests under the Act because they were not filed with the city's public information officer. Generally, a request for public information need not be addressed to the officer for public information of a governmental body to be a valid request under the Act. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974); *see also* Gov't Code § 552.202 (each department head of governmental body is an agent of officer for public information for purposes of receiving requests under Act). The Act merely requires a request to be reasonably identifiable as a request for public records. *See* ORD 497. In this instance, we find that the written communications provided to the city by the requestor can reasonably be judged as requests for public information for purposes of the Act. Additionally, we determine that the requests

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create 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 dism'd); Open Records Decision No. 452 at 3 (1986).

at issue were properly delivered to the city. Thus, we determine that the city is obligated to respond to the requests as provided under the Act.

Next, you state that the requests include questions. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). In this instance, we find that although portions of the requests are phrased as questions, these portions of the requests are sufficiently specific to enable the city to identify any responsive information that is within its possession or control. *See* Open Records Decision No. 483 at 2 (1987) (stating that the Act requires no particular request form or "magic words"). Thus, to the extent the city maintains information responsive to these portions of the requests at issue, we assume you have released this information. If you have not released such information, then you must do so now.

Next, we address the city's obligations under section 552.301 of the Government Code. This section prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You state that the city received the first request on January 18, 2008. However, you did not ask this office for a decision until February 12, 2008 or submit the responsive documents until February 20, 2008. Consequently, we find that the city failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the submitted information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory

predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the city has waived its claims under section 552.108. Therefore, the city may not withhold any of the submitted information under section 552.108 of the Government Code. Section 552.130 of the Government Code can provide a compelling reason to overcome this presumption. Therefore, we will consider your arguments under section 552.130.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130 (a)(1)-(2). We note that this provision only applies to motor vehicle record information issued by the State of Texas, and not other states. We also note that section 552.130 protects personal privacy. The information you have marked contains drivers' license numbers issued by other states. Further, the requestor is one of the individuals to whom a portion of the marked Texas motor vehicle record information pertains. As such, the requestor has a right of access to his Texas motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Thus, the city must release the requestor's Texas motor vehicle record information and the out of state drivers' license numbers that we have marked for release.² The remaining information at issue is Texas motor vehicle record information of individuals who are not the requestor. Therefore, the city must withhold the remaining information it has marked, in addition to the information we have marked, under section 552.130. As you raise no other arguments against disclosure of the remaining information, it 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

²Some of the information that is subject to release is confidential information that is not subject to release to the general public. *See Gov't Code* § 552.352. However, the requestor in this instance has a special right of access to the information. *Id.* § 552.023. Because some of the information is confidential with respect to the general public, if the city receives a future request for this information from an individual other than the requestor, the city should again seek our decision.

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 challenge 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 307651

Enc. Submitted documents

c: Mr. Michael Christopher Kerr
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(w/o enclosures)